

# EXHIBIT 3 - Cont'd

## Pages 111 - 238



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Malcolm Barr  
 Hampshire Racing

Name of Horse	For Period	Number of Days	Rate	Amount
Westy	Jan 1 to Jan 31	31	45	1395
Toby	to	1	1	1
	to			
	to			
	to			
	to			[2790]

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	110 x 2
Veterinary	220 -
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	25 x 1
Misc.	25
Misc.	
Total	3085
Previous Balance	0
Balance to Date	3085

Thank you!



Tina Malgarini Mawing

304-725-0653

483 Paulas Circle

Kearneysville, WV

25430

Bill To:
Malcolm Barr Hampshire Alliance

Name of Horse	For Period	Number of Days	Rate	Amount
Toby	Feb 1 to Feb 28	28	45	1260
Westy	1 to 1	28	1	1260
	to			
	to			
	to			
	to			2520

OTHER CHARGES			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Blacksmith	110 x 2		220-
Veterinary			
Medicine and Vitamins			
Licenses			
Nominations			
Shipping	FROM:	TO:	
Pony to post	25 x 2		50
Misc.			
Misc.			
Total			2790-
Previous Balance			0
Balance to Date			2790-

Thank You!



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:
Malcolm Barr Hampshire Racing

Name of Horse	For Period	Number of Days	Rate	Amount
Westy	Mar 1 to Mar 31	31	45	1395
Toby	1 to 1	31	45	1395
	to			
	to			
	to			
	to			[2790]

<b>OTHER CHARGES</b>	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith 110 x 2	220-
Veterinary	
Medicine and Vitamins 1/2 bottle clen	60-
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post 25 x 2	50
Misc.	
Misc.	
Total	3120-
Previous Balance	0
Balance to Date	3120

Thank you!



Tina Maigarini Mawing

304-725-0653

483 Paulas Circle

Kearneysville, WV

25430

Malcolm Barr  
Hampshire Alliance

Name of Horse	Pay Period	Number of Pairs	Rate	Amount
Westy	Apr 1 to Apr 21	21	45	945-
Toby	Apr 1 to Apr 30	30	45	1350-
	to			
	to			
	to			
	to			

## OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	110 x 2	220-
Veterinary		
Medicine and Vitamins		
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post	25 x 2	50-
Misc.		
Misc.		
Total		2565-
Previous Balance		0
Balance to Date		2565-

Thank you!



Tina Malgarini Mawing

304-725-0653

483 Paulas Circle

Kearneysville, WV

25430

Bill To:

Malcolm Barr  
Hampshire Racing

Name of Horse	For Period	Number of Days	Rate	Amount
Toby	May 1 to May 31	31	50	1550-
	to			
	to			
	to			
	to			
	to			

## OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	110	110-
Veterinary	(Sorry, statement from vet came late)	104-
Medicine and Vitamins	was billed to my acct	
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25x2	50-
Misc.		
Misc.		
Total		1814-
Previous Balance		0
Balance to Date		1814

Thank you!







Tina Margaret Mearns  
 433 Paulas Circle  
 Kearneysville, WV  
 25430

Home: 304-725-0653  
 Mobile: 303-720-9522

Bill To:  
 Mr. James Carter

Name of Horse	For Period	Number of Days	Rate	Amount
A Little Risky	Aug 8 to Aug 31	23	45	1035
Sleg Blaster	" to "	"	1	1
	to			
	to			
	to			
	to			2070

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith 2x100	200-
Veterinary	
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc.	25-
Misc.	
Total	2295
Previous Balance	0
Balance to date	2295

Thank you!

EXHIBIT

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Tina Malgarini Mowring  
453 Paulas Circle  
Kearneyville, WA  
25430

Home: 304-725-0653  
Mobile: 503-720-9522

Bill To:

Mr. James Carter

Name of Horse	For Period	Number of Days	Rate	Amount
A little Risky	Sept 1 to Sept 29	29	45	1305 -
sky Blaster	1 to Sept 30	30	45	1350 -
	to			
	to			
	to			
	to			2655 -

## OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	
Veterinary	100 -
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc.	
Misc.	

Balance + 870<sup>00</sup> (Anthony's  
Colonial bill)  
(TOTAL \$5970<sup>00</sup>)

Total	2805 -
Previous Balance	2295 - Aug -
Balance to Date	5100 -

Thank you!



Mr. Margaret [unclear]  
 453 Paulas Circle  
 Kearneyville, MO  
 23430

Home: 804-725-0653  
 Mobile: 503-720-9322

NAME
Mr. James Carter

Item	Period	Number of Days	Rate	Amount
Sky Blaster	OCT 1 to OCT 31	31	45-	1395-
	to			
	to			
	to			
	to			
	to			

## OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	
Veterinary	100-
Medicine and Vitamins	
Clenbuterol \$200    SMZ - 350	250-
Licenses	
Nominations	
Shipping:                      FROM:                      TO:	
Pony to post	
Misc.	25-
Misc.                      Paddock fee	50-
	1820-
	970-
	2790-

Thank you!



Tina Margarini Mawing  
 453 Paulas Circle  
 Kearneysville, W.V.  
 25430

Home: 304-725-0653

Mobile: 503-720-9322

Mr. James Carter

Name of Horse	Start Period	Number of Days	Rate	Amount
Sky Blaster	Nov 1 to Nov 30	30	45-	1350-
Valentines Humor	" to "	"	"	1350-
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	X 2 200-
Veterinary	teeth floated 55-
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc.	
Misc.	
Total	2955-
Previous Balance	2790- Aug-08
Balance to Date	5745-

Thank you!



Trina Margaret Hawking  
453 Paulas Circle  
Hearneysville, IN

25430

Home: 304-725-0653

Mobile: 303-720-9322

Bufo Mr. James Carter
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Name of Horse	From Period	Number of Days	Rate	Amount
Valentines Honor	Dec 1 to Dec 31	31	45-	1395-
Sky Blaster/KO	Dec 1 to Dec 31	"	"	"
Bride	to			
	to			
	to			
	to			2790

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	100 x 2	200-
Veterinary	teeth. Knockout Bride	50-
Medicine and Vitamins	flatted	
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post		
Misc.	horse blanket (1)	75-
Misc.		
Total		3115-
Prize Money Balance		0
Balance due Date		3115-

Thank you!



Finca Algalanui Hauling  
483 Paulas Circle  
Kearneysville, WV  
25430

Home: 304-725-0653

Mobile: 503-720-9322

Mr. James Carter  
Ranbleston Farm  
445 Ranbleston Lane  
Bluemont VA 20135

Name of Horse	Start Period	Number of Days	Rate	Amount
Valentinus Humor	Jan 1 to Jan 31	31	45-	1395
Knockout Bride	1 to 1	1	1	1395
	to			
	to			
	to			
	to			2790-

#### OTHER CHARGES

Percentage of winning:	
Percentage of winning:	
Percentage of winning:	
Percentage of winning:	
Blacksmith	
Veterinary	200-
Medicine and Vitamins	
Licenses	
Nominations	
Shipping:	FROM: TO:
Pony to post	
Misc.	
Misc.	

Total  
Previous Balance  
Balance to Date

2990-

0

2990-

Thank you





Tina Magarini Hawing  
483 Paulas Circle  
Hearneysville, MD  
25430

Home: 304-725-0653

Mobile: 503-720-9522

Bill To:

James Carter  
Randleston Farm  
445 Randleston Ln  
Blue mont VA 20135

Name of Horse	For Period	Number of Days	Rate	Amount
Valentine's Humor	Feb 1 to Feb 29	29	45	1305-
Knockout Bride	" to Feb 3	3	1	135-
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	
Veterinary	100-
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc.	
Misc. Swim card / pool use	75-
Total	1615-
Previous Balance	0
Balance to Date	1615-

Thank you!



Blue Margarita Drawing  
453 Santos Circle  
Hearingsville, W.V.  
25430

Home: 304-725-0653  
Mobile: 503-720-9522

Mr. James Carter
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Item	For Period	Number of Days	Rate	Amount
Valentine's Humor	March 1 to March 31	31	45-	1395-
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	
Veterinary	110-
Medicine and Vitamins	
Licenses	Worm 12-
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc.	25-
Misc.	
	1542-
	0
	1542

Thru the bank







304-123-0000  
483 Paulas Circle  
Kearneysville, WV  
25430

Sal To:  
JACK JORDAN  
NORMA RODNEY.

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	NOV 01 to NOV 30	30	50	1500
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 X 1	115
Veterinary		
Medicine and Vitamins	Aug 9 Farmer	40
Licenses		
Nominations		
Shipping:	FROM: TO:	Ø
Pony to post	25 X 1	25
Misc.	WORMER X 1	10
Misc.		

Total 1690  
Previous Balance  
Balance on Date

THANKS!

EXHIBIT

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Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:

JACK JORDAN.

NORMA RODNEY.

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER.	01 DEC to 31	31	50	1550
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 x 1	115
Veterinary	Jug & FARMCAU	60
Medicine and Vitamins	1 BOTTLE CLEN.	180
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post	25 x 1	25
Misc.	TEETH	60
Misc.		
Total		\$ 1990
Previous Balance		+ 1190
Balance to Date		\$ 3180

THANKS!



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill to:

JACK JORDAN.  
 NORMA ROONEY.

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	01 JAN to 31	31	50	1550
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		0
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 x 1	115
Veterinary		0
Medicine and Vitamins	ELECTROLYTES 3 x 7	21
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25 x 1	25
Misc.	SWINCARS	0
Misc.		
Total		\$ 1711
Previous Balance		\$ 1990
Balance to Date		\$ 3701

THANKS!



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:

JACK JOHNSON.

NORMA ROSEMAN

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	FEB 01 to 29	29	50	1450.
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	4th.	\$
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 X 1	115
Veterinary	JUG & ANESTHESIA	40
Medicine and Vitamins	ELECTROLYTES X 4	28
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post	25 X 2	50
Misc.	MEAS FOR LIVER TREATMENT.	0
Misc.	SWIMCARE	0
Total		1683.
Previous Balance		
Balance to Date		

THANKS!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:

JACK JORDAN  
NORMA ROBINSON

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	APRIL 01 to 30	30	50	1500
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	PLACED 2ND	520
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 X 1	115
Veterinary	SCOPE	50
Medicine and Vitamins	ELECTROLYTES	28
Licenses	1 BOTTLE CLEN	160
Nominations		
Shipping:	FROM: TO:	0
Pony to post	25 X 2	50
Misc.	SWINCARD	80
Misc.	PAST DUE	46
Total		\$2549.
Previous Balance		
Balance to Date		

THANKS!





Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:
JACK JORDAN
NORMA RODNEY

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	MAY 01 to 31	31	50	1550
	to			
	to			
	to			
	to			
	to			

OTHER CHARGES			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Blacksmith	115 X 1		115
Veterinary			
Medicine and Vitamins	ELECTROLYTES		28
Licenses			
Nominations			
Shipping:	FROM:	TO:	0
Pony to post	25 X 1		25
Misc.	SWINCARA		80
Misc.	PAST DUE APRIL PAYMENT		2549
Total			
Previous Balance			
Balance to Date			4347

THANKS!





Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:

JACK JORDAN  
NORMA RODNEY.

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	JUNE 01 to 30 -12	30	50	1500
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	PLACED 2ND	340
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 X 1	115
Veterinary	ELECTRO TUG X 2	50
Medicine and Vitamins		
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post	25 X 2	50
Misc.	SWIMCARD	80
Misc.	PAST DUE MAY PAYMENT.	1798
Total		
Previous Balance		
Balance to Date		\$3933

THANKS!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:

NORMA ROONEY  
JACK JORDAN

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	JULY 01 to 31 - 12	31	50	1550
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 X 1	115
Veterinary		
Medicine and Vitamins	MEAS	
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25 X 1	25
Misc.	SWIM CARD	
Misc.	PAST DUE MAY & JUNE	3933
Total		
Previous Balance		
Balance to Date		\$ 5623

THANKS!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

JACK JORDAN  
NORMA ROBERT.

Name of Horse	For Period	Number of Days	Rate	Amount
NICKS MONSTER	Aug-01 to 31-12	31	50	1550
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	115 x 1
Veterinary	0
Medicine and Vitamins	0
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc. PAST DUE	
Misc. MAY - JUNE - JULY	5623
Total	
Previous Balance	
Balance to Date	\$7285

PLEASE PAY YOUR BILL!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill to:  
JACK JEROME  
Norma Rooney.

Name of Horse	In Period	Number of Days	Rate	Amount
Nicks Monster	SEPT 01 to 30-12	30	50	1500
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	115 X 1	115
Veterinary		
Medicine and Vitamins	150	150
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post		
Misc.	PAST DUE	
Misc.	MAY - JUNE - JULY - AUG	7288.
Total		
Previous Balance		
Balance in Date		\$ 9053.

PLEASE PAY YOUR BILL !!!  
000





Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:

RALPH MAWING

Name of Horse	For Period	Number of Days	Rate	Amount
GYPSY	01-31 to 13.	31	40	1240
LUKE	" to	31	40	1240
GIBSON	" to	31	40	1240
ROSE	" to	31	25	775
	to			
	to			

## OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	[PAID BY RALPH]
Veterinary	
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post 25X2	50
Misc.	
Misc.	
Total	4545
Previous Balance	
Balance to Date	

PD  
THANKS!

EXHIBIT

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Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:
RAAH HAWES

Name of Horse	For Period	Number of Days	Rate	Amount
GYPSON	02-28 to 13	28	25	700
LUKE	4 to	28	40	1120
GIDEON	4 to	28	40	1120
ROSE	4 to	28	25	700
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	
Veterinary	
Medicine and Vitamins	
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	
Misc. SWIMCARE	160
Misc.	
Total	3800
Previous Balance	
Balance to Date	\$8600

THANKS!





Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:

RALPH HAVENS

Name of Horse	For Period	Number of Days	Rate	Amount
GYPSY	03-31 to 12	31	25	775
LUKE	" to	31	40	1240
GIOSON	" to	31	40	1240
ROSE	" to	31	40	1240
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	10% Lukes win	1560
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	1 Trim 110 x 3	30
Veterinary		330
Medicine and Vitamins		
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post	25 x 1	25
Misc.		
Misc.		
Total		6440
Previous Balance		860
Balance to Date		7300

THANKS!





Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Garnis Williamson  
 1030 Antioch Rd.  
 Fayetteville, Ga  
 30215

Name and Address	For Period	Number of Days	Total	Amount
Sandken Bobbe	Jan 1 to Jan 31	31	50	1500-
	to			
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	Bobbe 3rd place	270-
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	Bobbe	110-
Veterinary		
Medicine and Vitamins		
Licenses	owner's license	30-
Nominations		
Shipping	FROM TO:	
Pony to post	25x2	50-
Misc.	Jockey club Papers	200-
Misc.		
Total		2160-
Previous Balance		0
Balance on Date		2160-

EXHIBIT

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Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:  
Gowis Williamson  
1020 Antioch Rd.  
Fayetteville, Ga 30215

Name of Horse	For Period	Number of Days	Rate	Amount
Smoken Bobbe	Apr 1 to Apr 30	30	50 <sup>00</sup> -	1500 -
Cathedral Peak	" to "	30	25 <sup>00</sup> -	750 -
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	(3rd place Bobbe)	260 -
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	Bobbe	110 -
Veterinary	Cat	55 -
Medicine and Vitamins	+ bottle clenbuterol / Bobbe	210 -
Licenses	omeprazole paste 25x2	50 -
Nominations		
Shipping	FROM: TO:	
Pony to post		
Misc.	swim card	160 -
Misc.		
Total		3095 -
Previous Balance		0
Balance to Date		3095

Thank you!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To: 1300  
Jarvis Williamson  
1020 Antioch Rd  
Fayetteville, Ga  
30215

Name of Horse	For Month	Number of Days	Rate	Amount
Bobbe	May 1 to May 31	31	50	1550-
cat	/ to /	31	25 (1/2)	775-
Lily Belle	/ to /	31	35	1085-
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	Bobbe / cat 110 / 55 (1/2)
Veterinary	
Medicine and Vitamins	Wormer / omeprazole paste / smz's 155-
Licenses	
Nominations	
Shipping	FROM: TO:
Pony to post	
Misc.	
Misc.	
Total	3725-
Previous Balance	0
Balance to Date	3725-

Thank you!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

GARVIS WILLIAMSON

Name of Horse	For Period	Number of Days	Rate	Amount
BOBBE	01 JUNE to 30-12	30	50	1500
CAT	to	30	25	750
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	BOBBE CAT	110 55
Veterinary	X-RAYS FOR CAT	600
Medicine and Vitamins	TREATMENT / JUG	25
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25 X 2	50
Misc.		
Misc.		
Total		3090
Previous Balance		
Balance to Date		

THANKS!





Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill to:

GARRETS WILLIAMS ON.

Name of Horse	For Period	Number of Days	Rate	Amount
SMOKEN BOBBE	01 JULY to 31-12	31	50	1550
CAT	to	31	50	775
	to			
	to			
	to			
	to			

OTHER CHARGES		
Percentage of winning % of \$	CAT 5%	575
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	BOBBE 110 X 1	110
	CAT 55 + 100 (TURF SHOES)	155
Veterinary		
Medicine and Vitamins	VITA TIG ON BOBBE & CAT	40
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25 X 3	75
Misc.		
Misc.		
Total:		3220
Previous Balance		
Balance to Date		

THANKS!





Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:

GARVIS WILLIAMSON

Name of Horse	For Period	Number of Days	Rate	Amount
SMOKER BOBBE	01 AUG to 31	31	\$0	1550
CAT	to	31	25	775
	to			
	to			
	to			
	to			

OTHER CHARGES		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	SMOKER BOBBE 110 x 1 CAT 55 x 1	110 55
Veterinary		145
Medicine and Vitamins		
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25 x 1	25
Misc.		
Misc.		
Total		\$2660
Previous Balance		
Balance to Date		



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill to:

GARITS Williamson

Name of Horse	For Period	Number of Days	Rate	Amount
BOBBE	01 SEPT to 30	30	50	1500
CAT	to	30	25	750
	to			
	to			
	to			
	to			

OTHER CHARGES			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Blacksmith	BOBBE 110 x 1		110
	CAT 55 x 1		55
Veterinary			
Medicine and Vitamins	1 BOTTLE GLEN		160
Licenses	2 ELECTROLYTES		15
Nominations			
Shipping	FROM TO:		
Pony to post	25 x 2		50
Misc.			
Misc.			
Total			\$2640
Previous Balance			
Balance to Date			

THANKS!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:
GARVIS WILLIAMSON

Name of Horse	For Period	Number of Days	Rate	Amount
CAT	01 Oct to 31-12	31	25	775
BOBBE	" to "	31	50	1550
	to			
	to			
	to			
	to			

OTHER CHARGES		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	CAT BOBBE	55 110
Veterinary		
Medicine and Vitamins		
Licenses		
Nominations	ORED TO BREEDERS CLASSIC	250
Shipping:	FROM: TO:	
Pony to post	25 x 2	50
Misc.	HOTWALKER	20
Misc.		
Total		2810
Previous Balance		
Balance to Date		

THANK U!



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

NAME GARVIS WILKINSON
--------------------------

NAME	TO PERIOD	NUMBER OF DAYS	DATE	AMOUNT
BOBBE	01 NOV to 30	30	50	1500
CAT	to	30	25	750
	to			
	to			
	to			
	to			

OTHER CHARGES			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Percentage of winning % of \$			
Blacksmith	BOBBE 110 x 1		110
	CAT 55 x 1		55
Veterinary			
Medicine and Vitamins			
Licenses			
Nominations			
Shipping	FROM: TO:		
Pony to post	25 x 2		50
Misc.	SWIMCAP		160
Misc.	2 WINTER BLANKETS		340
Total			
Previous Balance			2965
Balance to Date			

1 THANKS



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:  
 GARVIS WILLIAMSON

Name of Horse	For Period	Number of Days	Rate	Amount
SMOKEN BOBBE	01 DEC to 31-12	31	25	775
	to			
	to			
	to			
	to			
	to			

OTHER CHARGES		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	110 X 1	110
Veterinary		
Medicine and Vitamins	BOTTLE CLIN	160
Licenses		
Nominations		
Shipping	FROM: TO:	
Pony to post	25 X 1	25
Misc.	Swimcard	160
Misc.	TEETH	75
Total		\$1305
Previous Balance		
Balance to Date		

THANKS!



Tina Malgarini Mawing  
304-725-0653  
483 Paulas Circle  
Kearneysville, WV  
25430

Bill To:

GARVIS Williamson

Name of Horse	For Period	Number of Days	Rate	Amount
SMOKEN BOBBS	01 JAN to 31 - 13	31	50	1550
CATHEDRAL PEAK	to	31	25	775
	to			
	to			
	to			
	to			

## OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	BOBBS 110 x 1	110
Veterinary	CAT. 55 x 1	55
Medicine and Vitamins	ULCER MEDS	60
Licenses	WORMERS	60
Nominations		
Shipping:	FROM: TO:	
Pony to post	25 x 1	25
Misc.	SWIMCARR	160
Misc.		
Total		\$2795
Previous Balance		
Balance to Date		

THANK U ?





Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:

Garvis Williamson

Name of Horse	For Period	Number of Days	Rate	Amount
SMOKEN BOBBE	01 FEB to 28	28	50	1400
CAT	to	28	25	700
	to			
	to			
	to			
	to			

#### OTHER CHARGES

Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Percentage of winning % of \$	
Blacksmith	BOBBE 110 CAT 55
Veterinary	ULCER MEDS 60
Medicine and Vitamins	BLOOD CHECK 50
Licenses	
Nominations	
Shipping: FROM: TO:	
Pony to post	25 x 2 50
Misc.	
Misc.	
Total	2425.
Previous Balance	
Balance to Date	

THANKS!



Tina Malgarini Mawing  
 304-725-0653  
 483 Paulas Circle  
 Kearneysville, WV  
 25430

Bill To:

Garvis Williamson

Name of Horse	For Period	Number of Days	Rate	Amount
SMOKIN BOBBE	01 MAR to 31-13	31	50	1550
CAT	to	31	25	775
	to			
	to			
	to			
	to			

## OTHER CHARGES

Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Percentage of winning % of \$		
Blacksmith	BOBBE 110 x 1	110
	CAT 55 x 1	55
Veterinary		
Medicine and Vitamins	ELECTROLYTE x 2	15
Licenses		
Nominations		
Shipping:	FROM: TO:	
Pony to post		
Misc.		
Misc.		
Total		\$2505
Previous Balance		
Balance to Date		

THANKS



**CHART OF OWNERS<sup>1</sup> AND INVOICES PROVIDED**

<b>OWNER NAME</b>	<b>INVOICES PROVIDED BY MAWING</b>	<b>DATE RANGE</b>	<b>STALL RENT CHARGE</b>	<b>DAILY RATE CHARGED</b>
<b>Garvis Williamson</b>	<b>Yes</b>	<b>Jan. 2012-March 2013 (missing Feb. and March 2012). Williamson has been a client for years – no invoices prior to 2012 were produced</b>	<b>No</b>	<b>\$25-50</b>
<b>Ralph Havens d/b/a R and R Racing Stables</b>	<b>Yes</b>	<b>Jan. 2013-March 2013. Has been a client since 2012, no 2012 invoices provided</b>	<b>No</b>	<b>\$25-40</b>
<b>Jack Jordan/Norma Rodney</b>	<b>Yes</b>	<b>Nov. 2011- Sept. 2012. These appear to be complete from a comparison of the racing records</b>	<b>No</b>	<b>\$50</b>
<b>Brook Barack</b>	<b>No</b>			
<b>Gloria Malgarini- and Rory Coogan</b>	<b>No</b>			
<b>Betty Williamson</b>	<b>No</b>			
<b>Charles W. Engle Sr.</b>	<b>No</b>			
<b>Malcolm Barr d/b/a/ Hampshire Racing</b>	<b>Yes</b>	<b>March 2009-May 2010 (not complete per the racing records)</b>	<b>No</b>	<b>\$25-50</b>
<b>James Carter/Born to Run Stables</b>	<b>Yes</b>	<b>Aug. 2007 to March 2008 (prior to relevant damages period)</b>	<b>No</b>	<b>\$45</b>
<b>David Wratchford</b>	<b>No<sup>2</sup></b>	<b>Oct. 2008 to July 2009</b>	<b>Yes</b>	<b>\$25-40</b>
<b>Krista Dehnert</b>	<b>No</b>			
<b>Todd Harding</b>	<b>Yes</b>	<b>August –Sept. 2008</b>	<b>No</b>	<b>\$45</b>

<sup>1</sup> This document reflects the owners that could be gleaned from the publicly available racing records, but does not necessarily reflect all of the owners of horses trained, but not raced by Ms. Mawing. As Ms. Mawing testified at her deposition, her training records would reflect other such owners, but those records were not produced here.

<sup>2</sup> The Wratchford invoices we have to date were provided by Wratchford, not Mawing.



Period Ending	Stall Rent	No. horses/month	Invoices produced by Wretchford showing # of horses per month for which he was charged stall rent	Vanning
9/1/2008	\$0.00	0.0		\$225.00
10/1/2008	\$2,575.00	10.3		\$640.00
11/1/2008	\$2,450.00	9.8	2	\$580.00
12/1/2008	\$3,410.00	13.6	2	\$1,550.00
1/1/2009	\$2,950.00	11.8	2	\$450.00
2/1/2009	\$3,100.00	12.4	2	0
3/1/2009	\$3,415.00	13.7	2	\$450.00
4/1/2009	\$2,850.00	11.4	2	\$250.00
5/1/2009	\$5,950.00	23.8	2	\$150.00
6/1/2009	\$2,850.00	11.4	2	\$1,280.00
7/1/2009	\$3,000.00	12.0	2	\$225.00
8/1/2009	\$5,402.65	21.6	2	\$200.00
9/1/2009	\$1,350.00	5.4		0
10/1/2009	\$3,200.00	12.8		\$425.00
11/1/2009	\$3,680.00	14.7		\$500.00
12/1/2009	\$3,400.00	13.6		\$1,025.00
1/1/2010	\$3,040.00	12.2		\$100.00
2/1/2010	\$2,050.00	8.2		\$850.00
3/1/2010	\$3,250.00	13.0		\$1,400.00
4/1/2010	\$2,650.00	10.6		\$550.00
5/1/2010	\$2,650.00	10.6		\$300.00
6/1/2010	\$2,000.00	8.0		\$250.00
7/1/2010	0	0.0		\$350.00
8/1/2010	\$1,750.00	7.0		\$550.00
10/1/2010	0	0.0		\$50.00
12/1/2010	0	0.0		\$125.00
1/1/2011	\$3,000.00	12.0		\$400.00
2/1/2011	\$4,000.00	16.0		\$350.00
3/1/2011	\$2,000.00	8.0		\$200.00
4/1/2011	\$3,838.00	15.3		\$1,250.00
5/1/2011	\$2,000.00	8.0		\$300.00
6/1/2011	\$2,000.00	8.0		0
7/1/2011	0	0.0		\$80.00
8/1/2011	\$2,000.00	8.0		0
9/1/2011	\$2,585.00	10.3		\$380.00
10/1/2011	\$4,210.00	16.8		0
11/1/2011	\$2,000.00	8.0		\$250.00
12/1/2011	\$2,500.00	10.0		0
1/1/2012	\$3,810.00	15.2		\$300.00
2/1/2012	\$3,300.00	13.2		0
3/1/2012	\$3,000.00	12.0		0
4/1/2012	\$3,300.00	13.2		0
5/1/2012	\$3,630.00	14.5		0
6/1/2012	\$3,600.00	14.4		0
7/1/2012	\$3,720.00	14.9		\$110.00
8/1/2012	\$3,520.00	14.1		\$150.00
9/1/2012	\$5,550.00	22.2		\$50.00
10/1/2012	\$3,000.00	12.0		\$40.00
11/1/2012	\$3,000.00	12.0		0
12/1/2012	\$3,000.00	12.0		0
1/1/2013	\$630.00	2.5		0
2/1/2013				
3/1/2013				
4/1/2013				
Totals	\$140,165.65			\$16,335.00







IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA  
TINA MAWING, et. al.,  
Plaintiffs,  
vs.  
PNGI CHARLES TOWN GAMING,  
LLC, d/b/a CHARLES TOWN RACES  
AND SLOTS,  
Defendant.

RECEIVED

08-C-354

DEC 12 2008

CLERK OF COURT

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

September 12, 2008

Charles Town, West Virginia

BEFORE:

HONORABLE DAVID H. SANDERS, Judge

APPEARANCES:

Counsel for the Plaintiff:

DAVID M. HAMMER, Esq.  
MATHEW R. WHITLER, Esq.

Counsel for the Defendant:

BRIAN M. PETERSON, Esq.

MARCIA L. CHANDLER, RPR  
Official Court Reporter  
380 W. South Street  
Suite 4400  
Martinsburg, WV 25401

## P R O C E E D I N G S

THE COURT: This is a whole lot of people for a case before yesterday or the day before didn't exist, but we are calling ourselves into session in the case of -- I am not going to read all of the names but I will read Tina Mawing, Plaintiff, et. al., Plaintiffs, versus PNGI Charles Town Gaming, d/b/a Charles Town Races and Slots, Civil Action 2008-C-354.

There is a notice of hearing that was faxed to the Court yesterday afternoon. My fax is dated September 11th at 1:53 p.m. signed by Mr. David Hammer who is here today asking for an emergency hearing for temporary restraining order and preliminary injunction.

I will have you know this is normally something that would be on Judge Steptoe's docket. Judge Steptoe is at the end of a several week vacation in which he was taking children to school and otherwise and he is not here holding cases or holding hearings today.

Judge Steptoe was contacted through his secretary Brenda and this will be his case and the only thing I intend to do in this case is deal with the issue that comes before us positioned as some sort of emergency issue.

So we have as I noted David Hammer who is the attorney who has filed this matter.

1 Mr. Hammer, how are you this morning? You have  
2 with you several of the named Plaintiffs, do you?

3 MR. HAMMER: Yes, Your Honor. I have Tina Mawing  
4 to my right and Randy Funkhouser to my left joined by  
5 Matt Whitler my co-counsel from Martin & Seibert.

6 I have for Your Honor an amended request for  
7 temporary restraining order that primarily amends the names  
8 of the Plaintiffs. There are a few minor typographical  
9 corrections in the body of it, but substantially the same  
10 except for reducing the number of names of Plaintiffs.

11 THE COURT: All right, sir.

12 MR. HAMMER: If I may tender what I filed this  
13 morning.

14 THE COURT: Okay, thank you very much. We are not  
15 attended by a clerk today. Are we going to need a clerk?  
16 Are exhibits going to be offered?

17 MR. HAMMER: We have two exhibits.

18 THE COURT: Well, maybe we'll get a clerk.  
19 Brenda, maybe we can get a clerk. Thank you very much.

20 Brian Peterson is here representing Penn National.

21 MR. PETERSON: Yes, Your Honor.

22 THE COURT: Mr. Peterson, do you want to tell us  
23 who you have with you here today?

24 MR. PETERSON: This is my client representative

1 his name is Dicky Moore.

2 THE COURT: I know Mr. Moore.

3 MR. PETERSON: You know Mr. Moore. Over here we  
4 have Mr. Zimny, Erich Zimny, Racing Administrator for  
5 Charles Town Races and Slots. He's the general manager of  
6 racing, Dicky is.

7 THE COURT: Okay, I see. Well, in the brief time  
8 this matter has been before us, that is yesterday afternoon,  
9 I managed to read through the petition that is here, but  
10 rather than reciting my understanding of it, does anybody  
11 have any preliminaries before we -- Mr. Kratovil.

12 MR. KRATOVIL: Thank you, Your Honor.  
13 I represent Leslie Condon who is one of the named Plaintiffs  
14 in this action.

15 THE COURT: Yes.

16 MR. KRATOVIL: Ms. Condon indicated she does not  
17 wish to be a Plaintiff in this action and that she has no  
18 complaint against PNGI or Charles Town Races and Slots.

19 I spoke to Mr. Hammer minutes ago and he indicated  
20 to me that the amended pleading he filed had taken her name  
21 off of that list so I think my work here is done. I just  
22 wanted to make that known for the record.

23 THE COURT: Is that lady here?

24 MR. KRATOVIL: Yes, Ms. Condon is here.

1 THE COURT: Okay.

2 MR. KRATOVIL: In person. I would since an  
3 amended complaint has now been filed with the Court, I would  
4 ask my leave to withdraw.

5 THE COURT: All right, sir. Anybody have any  
6 objection to that?

7 MR. PETERSON: No objection.

8 MR. HAMMER: No objection.

9 THE COURT: Have a good day, Mr. Kratovil.  
10 So any other preliminaries that you want to take  
11 up before we invite I guess, you, Mr. Hammer, as the  
12 petitioner, to go ahead and start laying out your case?

13 MR. PETERSON: Your Honor, I would just like to  
14 have some understanding of what the scope of this hearing  
15 today is. As you mentioned this was just filed yesterday  
16 and I have had a very limited amount of time to meet with my  
17 client to even talk about this and today he hands me --

18 THE COURT: I tell you what, maybe it would be  
19 best if I would just recite my brief understanding of what  
20 this is about from going through it once just to tell you  
21 what I think.

22 Sir, are you represented by an attorney, who is  
23 this back there?

24 SPECTATOR: I am listed as a Plaintiff before you.



1 THE COURT: What is your name?

2 SPECTATOR: John Stahlin.

3 THE COURT: Are you raising your hand because you  
4 don't consider yourself to be represented by these folks the  
5 same way Mr. Kratovil did?

6 SPECTATOR: Yes. I have questions of the Court.

7 THE COURT: Well, we are not in a question and  
8 answer phase right now, but are you wishing not to be  
9 considered as represented by Mr. Hammer? Is that the  
10 purpose of your raising your hand at this moment?

11 SPECTATOR: Yes. I had no idea that I was  
12 involved in this until last night. I was never notified of  
13 this action.

14 THE COURT: Well, I tell you what, I will get  
15 right back to you. How many are present here who are in the  
16 position of Mr. Kratovil's client, Ms. Condon, who have been  
17 named as parties and who feel that you are not here  
18 represented by Mr. Hammer? So we have five, four hands  
19 there. Why don't you identify yourselves? Let's start in  
20 the front row, the gentleman in the white shirt, what is  
21 your name, sir?

22 SPECTATOR: James Casey.

23 THE COURT: James Casey.

24 MR. HAMMER: Mr. Casey has been removed from the

1 complaint, Your Honor.

2 THE COURT: Okay, then the next person over in the  
3 striped shirt.

4 SPECTATOR: Raimondo Di Cola.

5 MR. HAMMER: Mr. Di Cola has been removed from the  
6 complaint, Your Honor.

7 THE COURT: Okay, thank you. Then the gentleman  
8 who started this by raising his hand, your name?

9 SPECTATOR: My name is John Stahlin. I don't know  
10 if this is appropriate now but there are actually only five,  
11 after you remove the names that Mr. Hammer took off, there  
12 are only five names left. Two of them have been contacted  
13 this morning who do not wish to be represented as Plaintiffs  
14 which leaves three people and one person was unable to be  
15 contacted.

16 THE COURT: Well, you're not representing them?

17 SPECTATOR: I do not represent them. I am just  
18 telling you that what you have is actually after you remove  
19 Mr. Hammer's list of 10 of 19 that leaves five and two of  
20 those five knew nothing about it and they do not wish to be  
21 represented but I can't speak for them.

22 THE COURT: And the hand behind Mr. Stahlin, your  
23 name?

24 SPECTATOR: Karen Freer.

1 THE COURT: Karen Freer.

2 Your new pleading reduces it to five?

3 MR. HAMMER: Tina Mawing, George Yetsook, Lynn  
4 Venham, Robert Bir, John Milton. We just received word at  
5 10:15 this morning he does not want to be included.

6 THE COURT: Does not want to be included?

7 MR. HAMMER: No.

8 THE COURT: The gentleman who Mr. Stahlin there  
9 says that he has some sort of word that there is one other  
10 person who doesn't wish --

11 SPECTATOR: Two others, Ryan Beattie and  
12 Lynn Venham. I am not giving it to you firsthand.

13 THE COURT: I am not taking it from you firsthand  
14 either.

15 MR. HAMMER: Mr. Beattie has been removed as well.  
16 We understood that Ms. Venham, the last word she did want to  
17 participate subject to some change.

18 THE COURT: All right. So that is whittling down  
19 the Plaintiffs then. I guess you folks who raised your hand  
20 saying you didn't want to participate, of course, obviously  
21 this is a public hearing, you are free to be here to observe  
22 and invited to do so, you're also free to go if you want to  
23 just as Mr. Kratovil made his exit but no one is telling you  
24 you have to leave.

1           So, Mr. Hammer, we would then having now  
2           straightened out how extensive the list of Plaintiffs is,  
3           we'll invite you to lay out your case here.

4           Again, I will tell you all that I am only acting  
5           on the alleged emergency basis sitting in this case  
6           temporarily until Judge Steptoe comes back and he will take  
7           whatever is left of the case after today.

8           MR. HAMMER: Thank you, Your Honor.

9           We are here, of course, pursuant as Your Honor  
10          just indicated to Rule 65 seeking temporary restraining  
11          order.

12          As my first exhibit, I would like to tender to  
13          Your Honor the contractual agreement between PNGI Gaming and  
14          Racing and the Charles Town Horsemen's Benevolent and  
15          Protective Association. To understand why we are here it is  
16          important to work through several clauses in this contract.

17          THE COURT: Frankly, that contract I think is  
18          actually available on-line, I think, on the internet.

19          Thank you, Shayna, and good morning to you.

20          All right, Mr. Hammer.

21          MR. HAMMER: This is the contract between the  
22          Racetrack and between Charles Town HBPA. You will see, Your  
23          Honor, as you turn to page 2 and page 3 of the contract, the  
24          numbers are down at the very bottom of the page in very

1 small print, you will see that page 3 Charles Town Races  
2 acknowledges that the HBPA is the exclusive bargaining agent  
3 representative of the HBPA members. The HBPA has been  
4 acknowledged by the Racing Commission to be that  
5 representative and this contract acknowledges and  
6 incorporates that.

7 Now, at the bottom of page 2 it indicates the  
8 parties intend to be bound by this contract.

9 (Cell phone rings.)

10 THE COURT: Apparently, someone is wanted on the  
11 phone. Turn off all phones, please, everyone, thank you.

12 All right, thank you.

13 Go ahead, Mr. Hammer.

14 That is the same thing as what they call a close  
15 shop, in other words, anyone who is maintaining horses at  
16 the track must negotiate through the HBPA?

17 MR. HAMMER: Yes, Your Honor.

18 THE COURT: Ma'am, perhaps you can take that phone  
19 outside of the hearing room.

20 SPECTATOR: It is off now.

21 THE COURT: Let's have a moment while everyone  
22 checks their pockets to make sure that it's off so someone  
23 doesn't feel unnecessarily humiliated.

24 I will tell one story just to break the ice here,

1 there was a head medical examiner in the State of West  
2 Virginia who was testifying in a murder trial, very  
3 important murder trial in this room, and was on the stand  
4 when his phone rang while he was testifying.

5 Anyhow, go ahead, Mr. Hammer.

6 MR. HAMMER: Thank you, Your Honor.

7 Turning to the bottom of page 3 it discusses  
8 exclusive representation in some more detail. You will see  
9 that the last full sentence of that page says, "Any  
10 negotiation or discussion of the terms and provisions of  
11 this Agreement, or any amendment thereto, or any Agreement  
12 which shall supersede the terms and provisions of this  
13 Agreement with any person, entity or representative of an  
14 entity that is not the exclusive bargaining agent and  
15 representative of the Horsemen, as certified by the West  
16 Virginia Racing Commission, shall constitute a breach of  
17 this agreement."

18 So the parties are firmly acknowledging that not  
19 only is the HBPA an exclusive bargaining agent, but if there  
20 is any negotiation with any other person that constitutes a  
21 breach of this agreement.

22 Indeed, the next paragraph affirmatively places an  
23 obligation on the parties on the Racetrack to not only  
24 negotiate this agreement but any matters reasonably related



1 to any provision of this agreement. So the agreement both  
2 incorporates its terms within the four corners and any  
3 matters reasonably related to this agreement. It is in  
4 other words a broad obligation to bargain.

5 Now, turning to page 13 at the top of page 13 it  
6 sets forth an arbitration provision. It is clear that if,  
7 "There is a disagreement between the parties as to whether  
8 any party has complied with the terms or conditions in this  
9 agreement, then Charles Town Races and the HBPA shall each  
10 choose an Arbitrator and the two Arbitrators shall choose a  
11 third Arbitrator. The Board of Arbitrators shall decide the  
12 issues involved."

13 Below that Section 11 Stalls. We now deal with  
14 the topic of stalls.

15 THE COURT: Okay, all right.

16 Now, Mr. Hammer, in fairness Mr. Peterson started  
17 to address the Court with regard to a question as to what  
18 the scope of our hearing would be, and we got sidetracked by  
19 all those persons who wished to opt out of this and never  
20 went back to Mr. Peterson, I was going to simply say what my  
21 understanding was.

22 Let me do a real brief thumbnail sketch of what I  
23 thought we were here for today, that is, there was a  
24 representation made and I learned it yesterday afternoon in

1 reading through it that there was a situation coming up  
2 today where several members of the HBPA were being asked to  
3 remove horses from stalls at Charles Town Races as of  
4 today's date, the 12th of September, that was in violation  
5 of an agreement, and that the emergency arose from the fact  
6 that the horses would be stripped of their stall rights I  
7 think that is as of today and that is why it needed to be  
8 considered today.

9 MR. HAMMER: Precisely.

10 THE COURT: That is my entire understanding of why  
11 we were here.

12 MR. PETERSON: Just so we are clear, we would  
13 consider today only a temporary restraining order and not  
14 the preliminary injunction on the merits. There would be a  
15 separate hearing for the preliminary injunction.

16 THE COURT: My understanding with Judge Steptoe.  
17 I would only handle the TRO.

18 MR. HAMMER: Okay.

19 THE COURT: That is the only --

20 MR. PETERSON: That is what I wanted to make sure  
21 about.

22 THE COURT: Well then I have the same  
23 understanding.

24 MR. PETERSON: Okay.

1 THE COURT: Go ahead.

2 MR. HAMMER: That is right. So below the  
3 arbitration provision now turns to stalls and importantly in  
4 the first paragraph the second sentence, "It is recognized  
5 by both parties that effective stall utilization is  
6 important to the Charles Town Races management and that  
7 equitable allocation is essential to the livelihood of  
8 Horsemen."

9 That is one of the grounds for the TRO is that  
10 there is irreparable harm and the parties by this legally  
11 binding agreement have recognized that equitable allocation  
12 of stalls is essential to the horsemen's livelihood.

13 It goes on to say in paragraph B on page 13,  
14 "Charles Town Races shall not discriminate in the allocation  
15 of stalls by reason of HBPA membership or activity or  
16 condone its representatives or employees discriminating in  
17 the allocation of stalls."

18 So why we are here is because they have attempted  
19 in a manner specified to not only allocate stalls but to  
20 strip stalls away from my clients. The HBPA is here because  
21 this contract is being violated by the purported stall  
22 agreement which I would like to tender to Your Honor next.

23 This is a copy of the revocable stall license  
24 agreement terms and conditions and it sets forth in the body

1 of the document various considerations that Charles Town  
2 Races has to insure that the people who have the stalls are  
3 actually racing and participating in the process which is  
4 there.

5 But here is what the concern is, in the bottom  
6 paragraph of this agreement, the paragraph that begins, "The  
7 effective or authorized period," you can see this one is for  
8 January 1, 2008 to June 30th of 2008, it wasn't tendered  
9 until recently so actually those dates are wrong, but this  
10 is the operable agreement.

11 The next to the last sentence begins, "In the  
12 event of a conflict between the terms of this Agreement and  
13 any Agreement between CTRS and the Horsemen's Benevolent  
14 Protective Association the terms of this agreement shall  
15 govern and control. This agreement represents the entire  
16 Agreement between the parties and supersedes all prior  
17 agreements and understandings."

18 On its face the Charles Town Races in  
19 consideration of the contract it has with HBPA is trying to  
20 say that this stall agreement which has never been  
21 negotiated with the HBPA Supersedes and controls over the  
22 actual contract that is in place.

23 It is further in violation of the agreement  
24 because it represents an effort by the Charles Town

16

1 Racetrack to negotiate individually or not even to negotiate  
2 technically by contract of adhesion to require that they  
3 sign this agreement also in violation of the main agreement  
4 which requires that any negotiation over matters pertaining  
5 to the agreement or reasonably related to the agreement be  
6 subject to arbitration. So we have an agreement here that  
7 is in violation of the stall agreement and that is in  
8 violation of the main contract.

9 Now, 9 U.S.C. Section 2 embodies the Federal  
10 Arbitration Act and that Act is given supremacy under the  
11 Supremacy Clause of the United States Constitution and it  
12 requires that, "A written provision in a contract evidencing  
13 a transaction involving commerce to settle by arbitration a  
14 controversy thereafter arising out of such contract or  
15 transaction, or the refusal to perform the whole or any part  
16 thereof, or any agreement in writing to submit to  
17 arbitration an existing controversy arising out of such  
18 contract, transaction or refusal, shall be valid,  
19 irrevocable, and enforceable, save upon such grounds as  
20 exist at law or in equity for the revocation of any  
21 contract."

22 We have a valid agreement in place the  
23 interpretation of which and application of which is very  
24 much at issue by this attempt to impose a contract of

1     adhesion upon members of the HBPA that interferes with the  
2     enforceable and agreed upon arbitration clause in the main  
3     contract. Therefore, pursuant to federal law, the Federal  
4     Arbitration Act, this Court should stay this action and  
5     should grant temporary injunction and should put some such  
6     temporary injunction in place until such time as the parties  
7     can exercise the arbitration clause set forth in the main  
8     agreement.

9             To do otherwise is to vitiate the terms of the  
10     contractually agreed upon arbitration clause and allow the  
11     Racetrack to force members of the HBPA to sign a contract of  
12     adhesion that is in its very terms violative and reneging  
13     upon the main agreement. So it is for this reason that we  
14     come to Your Honor and ask for this TRO.

15             Irreparable harm to the members, clearly, the  
16     parties acknowledge that by the terms in the agreement  
17     saying that the livelihood of the horsemen is at stake in  
18     the equitable allocation of stalls, so we have satisfied  
19     that requirement for temporary injunction.

20             Can it be remedied by monetary damages? No, it  
21     cannot be. These are conditioned athletes. These are  
22     horses. To move them out of the stalls will mean they fall  
23     out of condition; they will not have the same training  
24     facilities available to them, if they have any, and they

1 will not be competitive in upcoming races.

2 So we feel we have met all the requirements for a  
3 TRO and we ask the Court to stay the enforcement or stay the  
4 action of the Racetrack in evicting members of the HBPA from  
5 any of their stalls or in the case of Tina Mawing from all  
6 of her stalls.

7 THE COURT: Mr. Hammer, are you representing that  
8 some of your members have signed this contract?

9 MR. HAMMER: Some have signed this contract, yes,  
10 they have and some have signed it in the past.

11 THE COURT: Are you representing that the named  
12 parties that you have here today are all signatures to this  
13 type of contract?

14 MR. HAMMER: No, Tina Mawing who is to my right  
15 was not offered this contract because all of her stalls were  
16 stripped away so she hasn't been given the opportunity to  
17 sign that so that is not equitable allocation.

18 As to her you will see specific allegations in the  
19 complaint that it is her activity as a board member and  
20 member of the HBPA that has caused the Charles Town Races to  
21 retaliate against her, to discriminate against her, that too  
22 is properly the subject of arbitration.

23 THE COURT: All right. Just for purposes for  
24 illustrating whether or not there is an emergency nature to



1 this, how many of your clients or your members are you  
2 saying are actually to be stripped of their stalls today?

3 MR. HAMMER: Right now we believe that we have  
4 three or four. Ms. Mawing is being stripped of all five of  
5 her stalls. Mr. Ryan Beattie is being stripped of three of  
6 his stalls. George Yetsook is being stripped of and removed  
7 from three of his stalls. Lynn Venham is being removed from  
8 two of her stalls. Robert Bir is being removed from all  
9 four of his stalls. Larry Myers is being removed from two  
10 of his stalls. Larry Myers is removed.

11 THE COURT: Even though this came before the Court  
12 yesterday your petition says that this notice was sent to  
13 your members at the end of last month on the 29th of August.

14 MR. HAMMER: Yes, it was. Now, in the contract  
15 itself if you turn to page 25 of the agreement, there is a  
16 provision in paragraph 35 that provides, "No breach of this  
17 agreement or any term hereof shall be effective unless such  
18 waiver is in writing," it goes on to say, "No waiver of any  
19 breach shall be deemed a waiver of any other or subsequent  
20 breach."

21 The fact there is some past conduct by the  
22 Racetrack that is in breach of the main agreement not by the  
23 very terms of the agreement operates as a waiver of that  
24 agreement.

1           Now, the HBPA is here because obviously its status  
2 as the exclusive bargaining agent of the members of the HBPA  
3 is under attack by this effort to force its members to enter  
4 into an agreement that by its very terms supersedes the main  
5 agreement, so that is why the HBPA is here and that is why  
6 we ultimately will ask for a preliminary injunction. Today  
7 we are asking for a TRO in order to allow Judge Steptoe time  
8 to attend to the issue of whether these issues are  
9 arbitrable or not arbitrable which we think they are.

10           THE COURT: A question I asked when you launched  
11 into this agreement in its first pages, I asked you whether  
12 this was characterized as a close shop, that may not be an  
13 apt comparison, but in any event the question would be are  
14 there any horses that do race at Charles Town Races whose  
15 owners are not a member of the HBPA?

16           MR. HAMMER: Not to our knowledge. To our  
17 knowledge every single person who races at the Charles Town  
18 Races is a member of the HBPA.

19           THE COURT: Your feeling would make it so?

20           MR. HAMMER: Yes, sir.

21           THE COURT: I see, okay. So even those persons  
22 who opt out as parties here today and who have other lawyers  
23 who come in to have them opt out as parties are members of  
24 your membership?

1 MR. HAMMER: Yes, they are and they will benefit  
2 from the entry of a TRO which will force arbitration on  
3 these very issues whether they wish to participate or not  
4 directly.

5 I can't present evidence today but there are  
6 rumors that there are threats being directed against members  
7 that they will lose all of their stalls if they participate  
8 in this process and that is why some of the people have  
9 bailed out of this hearing. Now, I don't have witnesses to  
10 testify to that today but that is our understanding coming  
11 in this morning is why we are having people jumping out.

12 THE COURT: Thank you, Mr. Hammer.

13 Mr. Peterson.

14 MR. PETERSON: I am deeply troubled by the fact  
15 that Mr. Hammer has brought a complaint and request for  
16 injunction on behalf of a bunch of horsemen and trainers he  
17 has not even gotten permission to put on a pleading. Your  
18 Honor, I think that is borderline in violation of Rule 11 if  
19 not a clear violation and I am deeply troubled by that.

20 Secondly, there is a lot of horsemen here and  
21 trainers that are here that I am sure would not agree with  
22 that last statement Mr. Hammer made, they felt they're being  
23 threatened or intimidated in order not to be part of this  
24 lawsuit. I take issue with that statement definitely.

1           Now, the basis of this from listening to what  
2 Mr. Hammer just said is that this collective bargaining  
3 agreement essentially with the Horsemen's Association which  
4 does contain an arbitration clause.

5           Now, if this truly is a violation of this  
6 agreement, I don't think he can resort to this Court for  
7 injunctive remedy before even initiating arbitration on what  
8 he feels is a violation of this agreement. But aside from  
9 that, even if you consider this to be something that --

10           THE COURT: Wait, let me understand this then --  
11 mr. Peterson, just because I ask questions, I don't mean to  
12 cut you short on anything that you have to say to the  
13 Court -- but are you saying that it is anyone's right to  
14 invoke arbitration by simply asking for it and that would  
15 stop the process and that would in effect give something  
16 analogous to a TRO?

17           MR. PETERSON: Well, I think the arbitrator would  
18 have a decision to make whether there should be a TRO or any  
19 kind of temporary relief and not a Court because there is an  
20 arbitration clause in here the parties have agreed to.

21           THE COURT: So in your view it would be within the  
22 power of the HBPA to have simply said to the Charles Town  
23 Races we wish to arbitrate this, we have this issue,  
24 arbitrate it.

1 MR. PETERSON: Absolutely. These agreements were  
2 put in place months and months ago, the new version of it,  
3 some version of this.

4 THE COURT: The new version, you are talking about  
5 --

6 MR. PETERSON: Exhibit 2.

7 THE COURT: -- Exhibit 2, one page.

8 MR. PETERSON: There is a second page to it.  
9 It is essentially an application and agreement rolled into  
10 one. There are two pages. He gave you the second page but  
11 that is what we are talking about. These terms have been in  
12 place for months and months now and he shows up today only  
13 because some of the horsemen have been told that some of  
14 their stalls aren't going to be renewed and all of a sudden  
15 it is an emergency and he is asking for a temporary  
16 restraining order against the Track.

17 It is something that they could, if this was truly  
18 a violation of this agreement, which it is not, but if it  
19 were, they could have challenged this months ago and there  
20 would have been no reason to come to Court and apply for a  
21 drastic equitable remedy like a TRO.

22 So I am not sure other than for purposes of  
23 harassment why they would have waited until the very day  
24 that the people are supposed to vacate. I mean, two weeks

1 ago they were given notice. They were given two weeks to  
2 get the horses out. They show up on the last day and ask  
3 for a TRO and ask for this Court to essentially get into the  
4 business of the Charles Town Races and Slots to determine  
5 even under this agreement they have brought discretion to  
6 determine who stays in these stalls.

7 Your Honor, these stalls are free of charge to  
8 these horsemen. 40 percent of the people who race at  
9 Charles Town Races don't have stall agreements. It is  
10 absolutely not prejudicial whatsoever. As a matter of fact,  
11 I had them run -- and this is a preliminary figure -- but  
12 yesterday the percentage of races won by people who don't  
13 have stalls over there, we have 40 percent, 42 percent of  
14 the starters don't have stall agreements, they are off  
15 ground and they bring their horses in and they win 52  
16 percent of the races. It is absolutely not going to visit  
17 irreparable harm on these folks to have their stall  
18 agreements revoked. One or more only two of them have all  
19 their stalls revoked.

20 Now, this provision that he is relying on, this  
21 paragraph 11 that talks about stalls, only says that the  
22 Charles Town Races in paragraph 11B "shall not discriminate  
23 in the allocation of stalls by reason of HBPA membership or  
24 activity," and as came out in Mr. Hammer's proffer almost

1 all of it if not a hundred percent of the people who race  
2 over there are members and people who will be put in these  
3 stalls are members as well. They are not discriminating  
4 based on membership in the HBPA or their activity with the  
5 HBPA. There is no discrimination going on here.

6 The stall agreement is separate and it has always  
7 been separate from this agreement. There has been some  
8 version of this agreement in place from the beginning and it  
9 has never been negotiated by the HBPA what goes into this  
10 agreement and never been challenged as part of the HBPA  
11 agreement and it is completely separate.

12 It is a property owner's right to determine who  
13 gets these free stalls. I will tell you that it does have  
14 a direct impact on the quality of the racing there. It is  
15 incumbent upon Charles Town Races and Slots to have the  
16 highest quality horses on their property as they can in  
17 order to get the highest quality horses in these races and  
18 that has a direct effect on the amount of bets that are  
19 placed and the amount of people who are interested in  
20 putting money on the horses and the price of the purses and  
21 all of that. It directly benefits the HBPA because they get  
22 a percentage of the takings that they have the highest  
23 quality horses on the premises.

24 So my client is involved in a process where they



1 look at how many starts these horses have, they look at how  
2 many placements the horses have, they don't want horses that  
3 have a lot of starts but a lot of losses, so they go through  
4 this analysis to determine in their discretion who gets  
5 stalls and who doesn't.

6 There is an overflow of people who want stalls and  
7 can't get them. There is a number of folks that right now  
8 would move into these 140 or more stalls that are going to  
9 be vacated and vacant and they would like to have the  
10 opportunity to get in there and won't if a TRO is issued in  
11 this case.

12 THE COURT: Mr. Peterson, again, I want to hear  
13 everything but I have some questions as we run along here.

14 Mr. Hammer in his petition as I read it yesterday  
15 seemed to indicate there was somehow a surplus of around  
16 140 stalls that were, I guess, in his characterization not  
17 even in use so that it was not important to the Track other  
18 than as a vindictive thing to get these people out of the  
19 Track.

20 MR. PETERSON: Absolutely not. The stalls almost  
21 historically have almost a one hundred percent occupancy  
22 rate. The 140 that have been vacant have been vacant for a  
23 short period of time while the Track is going through this  
24 process of seeing who is going to vacate the premises and

1 when.

2 You have to understand that when you have a  
3 vacancy, these horses need to be consolidated so that the  
4 barns can be full and the trainers won't have to go to  
5 separate and different places to attend to their horses,  
6 so what they do is they look at the big picture, how many  
7 stalls do we have vacant, how many are going to be vacant  
8 and when after we don't renew some people's stall agreements  
9 so they can look at this collectively and that is why there  
10 are 140 vacancies. They are going through the process right  
11 now of trying to figure out how to consolidate things.

12 THE COURT: So as you say everyone who has a horse  
13 there is a member of the HBPA?

14 MR. PETERSON: Right.

15 THE COURT: So every stall is used by some member  
16 of that organization?

17 MR. PETERSON: Right.

18 THE COURT: There are more applications for those  
19 stalls than there are stalls that are available?

20 MR. PETERSON: That is right.

21 THE COURT: But that universe of stalls available  
22 there are all free?

23 MR. PETERSON: Right, they are all free.

24 THE COURT: Every one is free?

1 MR. PETERSON: The Track pays for the heat, the  
2 light, the cleaning, the security, everything that goes with  
3 these stalls, that is why this, I mean, there isn't a  
4 collective bargaining, they don't have to interact with the  
5 HBPA every time they want to make a decision.

6 THE COURT: Have they always been in your  
7 representation that allocation of stalls has always been  
8 made by the Track?

9 MR. PETERSON: That is correct. There is a  
10 committee at the Track that is made up of three or four  
11 folks who make those decisions all because it has been that  
12 way.

13 THE COURT: The HBPA never itself has been in the  
14 business of allocating stalls among members even though its  
15 occupancy is entirely made up of its members?

16 MR. PETERSON: No, it is in the discretion of the  
17 Track to grant these licenses and it is not something that  
18 is part of the collective bargaining process.

19 THE COURT: You used licenses, licenses and stalls  
20 are not the same thing, are they?

21 MR. PETERSON: No, because this is a licensing  
22 agreement essentially, I mean, these aren't --

23 THE COURT: Having a stall is a type of licensing?

24 MR. PETERSON: A license to be on the property and

1 in that space.

2 THE COURT: How do people who don't have stalls  
3 there but do race do they have licenses?

4 MR. PETERSON: Okay, I see where you are going.  
5 No, there is a difference between a racing license through  
6 the State, and I am talking about more in terms of property  
7 rights, a license like a hunting license to hunt on  
8 property, this is a license to have a horse stabled at the  
9 property. That is a good point. That is completely  
10 separate. This complaint indicates there is some sort of  
11 due process that is at stake here, this has some effect on  
12 their racing license. These folks that don't have stall  
13 agreements can come in and they can exercise their horses.  
14 Their license to race horses at Charles Town Races is  
15 completely separate and unaffected by whether they have a  
16 stall on the property. They are still allowed to bring  
17 horses there as long as you comply with other rules of  
18 racing. They can bring the horses there to exercise them  
19 before the race, you know, do whatever they want before the  
20 race just like everybody else that ships their horses in.  
21 This is not in anyway going to affect their license to race  
22 at Charles Town Races.

23 THE COURT: So there is some mechanism within  
24 Charles Town Races management of Charles Town Races that

1 makes some sort of determination as to how these stalls are  
2 allocated?

3 MR. PETERSON: Yes, a business decision.

4 THE COURT: Based upon winning, quality of horses,  
5 things of that nature?

6 MR. PETERSON: Right, exactly. They take a  
7 combination of objective and subjective factors, but mainly  
8 they look first at the number of starts for each horse, and  
9 that means the number of times they put them in a race, if  
10 they have a horse not being put in any races, they don't  
11 want it there. If there is a horse that is being put in  
12 races and consistently losing, that horse would go down on  
13 the list for consideration. They want owners and they want  
14 trainers there who have winning horses. They want winning  
15 horses stabled there.

16 THE COURT: Is the formula some sort of objective  
17 formulation?

18 MR. PETERSON: Yes, it is. Like I said a  
19 combination of objective, I mean, those are the first things  
20 they look at. They also look at other issues, if a trainer  
21 is someone causing problems with other trainers, someone who  
22 is abusing animals or not caring for their animals, not  
23 showing up feeding their animals, things like that, those  
24 are in there too. Those are a little bit more subjective

1 than pure statistical, you know, are they getting enough  
2 starts or not.

3 THE COURT: Since the HBPA has this agreement with  
4 the Track since it seems to be all encompassing for those  
5 who would race there, has it ever been the practice of the  
6 management of the races and the HBPA to agree upon a  
7 mechanism for the stall allocation?

8 MR. PETERSON: No, that has been left to the  
9 discretion of the Charles Town Races and Slots to determine  
10 that and they have always done it fairly and equitably as  
11 required by agreement. There is no constraint in this  
12 agreement. There is no side deals where they bargain over  
13 how and what criteria are used.

14 THE COURT: So this is a practice that has been  
15 going on for years?

16 MR. PETERSON: It is.

17 THE COURT: That's your representation?

18 MR. PETERSON: Yes, it is.

19 THE COURT: And this agreement, this revocable  
20 stall agreement, is this in one form or another has an  
21 agreement like this existed for years?

22 MR. PETERSON: It has always existed. This is the  
23 newest version of it but some version of that agreement has  
24 always existed at Charles Town Races and Slots since the new

32

1 management has taken over. When PNGI got involved they have  
2 always had an agreement. They were allowed to draft and  
3 they were allowed to use with their horsemen because it is  
4 their property and there is no constraint through this  
5 collective bargaining agreement that they put any type of  
6 language or criteria in it. They have a business to run,  
7 Your Honor.

8 THE COURT: Mr. Peterson, one would at least  
9 anticipate that if there is a competitive demand for stalls  
10 than there is availability that all people would be seeking  
11 those stalls as members of this organization that there  
12 would be some sort of competition and perhaps friction among  
13 members as to who gets the stalls and who doesn't so that  
14 has never come into bargaining between --

15 MR. PETERSON: In recent history we have had  
16 individuals including Mr. Yetsook who filed suit over having  
17 his number of stalls reduced. I will say that when  
18 Mr. Yetsook stood before this Court and Judge Steptoe,  
19 Judge Steptoe told him that he couldn't do that, the Court  
20 has no power over the case once the agreement expired.  
21 Now, he was being thrown out early before the agreement  
22 expired, but it was Judge Steptoe's representation and I  
23 have not had time to get either the transcript or order, but  
24 Judge Steptoe told Mr. Yetsook that once this license



1 expired, once this agreement expires, that there is nothing  
2 I can do for you because that is within the discretion of  
3 Charles Town Races and Slots. There are several people, you  
4 know, still that are involved in this case who are similarly  
5 situated, Mawing and Yetsook, well, Mr. Yetsook just had his  
6 stalls reduced, is my understanding, he still has stalls  
7 there.

8 THE COURT: Mr. Yetsook still has stalls there?

9 MR. PETERSON: Right. To answer your question  
10 there is only until recent history never been controversy  
11 over this agreement. It has only been a couple of  
12 individuals who have filed suit that have brought this to  
13 the Court's attention or to the Track's attention.

14 THE COURT: So your position is that a previous  
15 ruling in this Court by Judge Steptoe was that once the  
16 agreement -- the stall agreement is it an annual agreement?

17 MR. PETERSON: No, I think it is a six month  
18 agreement now.

19 THE COURT: Once the agreement runs its course  
20 that the Court has no power to determine whether or not the  
21 Track will again extend stall rights to any particular  
22 horsemen?

23 MR. PETERSON: That is right. The suit was  
24 dismissed after -- they ended up working out an agreement

1 where Mr. Yetsook could stay there through the end of the  
2 agreement and once the agreement was done I think they  
3 voluntarily dismissed the case based on that.

4 THE COURT: Now, is Ms. Mawing at the end of her  
5 agreement?

6 MR. PETERSON: Yes, Ms. Mawing's agreement expired  
7 in the end of August.

8 THE COURT: So your argument would be by  
9 Judge Steptoe's previous holding that the Court would have  
10 no authority to --

11 MR. PETERSON: Right, the Court has no authority  
12 to get involved in that decision not to renew her.

13 MR. HAMMER: Your Honor, Mr. Peterson is flatly  
14 wrong on several issues. The first issue he is flatly wrong  
15 on is the idea this stall agreement hasn't been negotiated  
16 in the past, indeed it has been negotiated.

17 THE COURT: Well, I know it's tempting when I am  
18 asking a lot of questions of Mr. Peterson to want to get up  
19 and give answers too. I will come back over to you. If you  
20 can keep a list of issues that you would like to address.  
21 I don't want to be unfair and ask only one side questions,  
22 it's just I ask questions as they pop into my mind, I just  
23 have to take them when they pop up.

24 But, Mr. Hammer, since you did have the floor, one

1 question of you real quickly, the long list of clients that  
2 you had listed in your initial has now been redrawn to  
3 include fewer names, those persons whose individual names do  
4 appear, are those your clients individually or basically is  
5 your client here the HBPA?

6 MR. HAMMER: And Ms. Mawing.

7 THE COURT: She is your individual client who has  
8 hired you directly?

9 MR. HAMMER: Yeah.

10 THE COURT: And the HBPA is also your client?

11 MR. HAMMER: They have also hired me directly.

12 THE COURT: Those clients here today?

13 MR. HAMMER: Yes, and others that are members of  
14 the HBPA like George Yetsook who is a member of the board.

15 THE COURT: Members of the HBPA.

16 MR. HAMMER: Mr. Yetsook is a member of the board  
17 of directors of the HBPA.

18 THE COURT: He is listed so we should consider him  
19 in that capacity?

20 MR. HAMMER: Both capacities individually and as a  
21 member because as I alleged in the complaint he feels that  
22 he was discriminated against.

23 (Cell phone rings.)

24 THE COURT: I really thought we took care of

1 that. I ask again did anybody want to search inside their  
2 pockets right now once again.

3 We'll get back to you, Mr. Peterson, if you can  
4 remember where you were since I have been peppering you with  
5 questions as we have gone along.

6 MR. PETERSON: Right. Well, I ask you to turn to  
7 page 14 of the agreement under the part about stalls and  
8 paragraph D says, "The terms and conditions for all stall  
9 applications," which is this agreement, it is a combination  
10 application agreement for all stall applications, "shall be  
11 determined by and set forth in an application by the Charles  
12 Town Races."

13 So right there it says it shall be determined by  
14 the Charles Town Races not it shall be determined by the  
15 HBPA and the Charles Town Races it just says that it is to  
16 be determined by them and has to be set forth in application  
17 and it is so right there dispells any question as to whether  
18 the HBPA has the right to collectively bargain over language  
19 in this agreement. It is right here in the collective  
20 bargaining agreement.

21 Now, does the Track seek input from the HBPA?  
22 They have a great relationship with the HBPA historically.  
23 I don't understand why they wouldn't seek input, but that  
24 doesn't mean they have the legal right to dictate what is in

1 this. Charles Town Races and Slots owns the property.  
2 They own the stalls. They can determine under this  
3 agreement who stays and who goes because as I said they are  
4 the ones taking all the risks here. They are the ones that  
5 have the duty to put on the best horses that they can put on  
6 and they want to do that.

7 Let me give you an example. When a horse race has  
8 a horse that is scratched for some reason and they have to  
9 fill the race, they will often go to the barns there to find  
10 a horse that can be put in that race, so it is incumbent  
11 upon them to have the best quality horses there on-site  
12 because that happens all the time. It happens very  
13 regularly that a horse gets scratched and they have to at  
14 the last minute call upon another horse to fill in. That is  
15 another factor they consider when they're making the  
16 determination of who stays and who doesn't. If there is a  
17 trainer that has a horse that they willingly put into races  
18 on a moments notice, that is something that is sort of a  
19 subjective criteria they use to say, hey, this person even  
20 though they may not have as many starts or as many  
21 placements as another, they'll keep that person on.

22 But, Your Honor, back to the irreparable harm.  
23 That is key here. In order to get a TRO they have to show  
24 irreparable harm. These folks have other places they can

1 put their horses. They have been given plenty of notice.  
2 If need be, they need a few more days, the Track would be  
3 very willing without a TRO to allow them to find a place for  
4 these horses. A lot of these folks have access to barns  
5 through the owners and they have access to barns through  
6 other trainers and there are other barns that have rental  
7 space available across the street from the Charles Town  
8 Races. There are other places for them to go. The fact is  
9 they don't pay anything to be there. It is not irreparable  
10 harm, Your Honor, to tell them, for the Track to tell them  
11 to go when it makes very little difference statistically and  
12 actually probably favors them to ship the horses  
13 statistically over having a place that is purely just a  
14 matter of convenience for them. That is not grounds for a  
15 TRO because it's inconvenient for them. Irreparable harm,  
16 it is not inconvenience, is what the standard is for the  
17 issuance of a TRO.

18 THE COURT: Another thing, every time I interrupt  
19 either of you, I want to hear fully what you want to lay out  
20 here today, I am not trying to truncate your presentation,  
21 but one representation Mr. Hammer makes here today, and I  
22 appreciate the fact that you have kept this on as you have  
23 been answering my questions and informing me of some  
24 technical things, I am just real not aware how these things

1 work, so I appreciate your answers, and also you have kept  
2 it on a rather high plain legally, but just to descend to  
3 maybe some more personal issues, Mr. Hammer says that you  
4 are wishing to exclude Ms. Mawing in some vindictive manner  
5 because she has given some testimony before the Racing  
6 Commission or some other body with regard to some issue  
7 existing between the parties.

8 MR. PETERSON: Your Honor, Ms. Mawing was given a  
9 license to be in those stalls after she testified in that  
10 hearing. That is absolutely false. There have been stall  
11 agreements entered into with her since she did that. That  
12 is not the reason that she was excluded. My understanding  
13 is that she had horses who were inferior to a lot of other  
14 horses that are there and it was based on that objective  
15 criteria is my understanding.

16 THE COURT: Inferior --

17 MR. PETERSON: I haven't had time to investigate  
18 this. I just got this yesterday.

19 THE COURT: Inferior based on their earnings?

20 MR. PETERSON: The number of starts and the number  
21 of placements in that order of things, yeah. But like I  
22 said they have given her agreements since then. They gave  
23 her at least one stall agreement since she testified in that  
24 hearing. That is not a reason.



1 THE COURT: As of today how many -- do all of her  
2 stalls, all of her stalls expire today?

3 MR. PETERSON: Yes, all of her -- they expired in  
4 August but I think they gave her two weeks to vacate and  
5 that comes out to today.

6 THE COURT: I see, I see. How many stalls did she  
7 have?

8 MR. PETERSON: Was it four, four or five.

9 THE COURT: Is there a typical number of stalls  
10 for an individual horsemen to have out there?

11 MR. PETERSON: Some have a lot more than that.  
12 Some have 10 or 20, right, I mean, as high as 40. My client  
13 tells me as high as 40. A lot of folks have many more  
14 horses than they have stall allocations as well. I mean,  
15 again, it is a horse by horse basis that they take things.

16 Again, we are talking about discrimination and  
17 public policy, I mean, there is no tort claim I am aware of  
18 that applies to a stall. I mean, it is silly to consider  
19 fair housing, I mean, the Fair Housing Act doesn't apply,  
20 you know. There is no right that these people have to  
21 continue occupancy in these stalls. There is no statute  
22 that protects stall users from discrimination. We are  
23 talking about public policy. That is just sort of a throw  
24 in in this complaint. There is no actual tort claim that

1 she could assert that I am aware of that she has a public  
2 policy reason she can't be taken out of this stall.

3 THE COURT: Okay, all right. Well, you have been  
4 answering my questions so I told you I didn't want to  
5 truncate so if you have more you want to present if you can  
6 recollect your thoughts.

7 MR. PETERSON: Well, that goes to the element of  
8 likelihood of success on the merits which I think is  
9 something you have to sort of look at in issuing any kind of  
10 injunctive relief. Is this complaint likely to succeed on  
11 the merits. Again, if you don't have a cause of action that  
12 protects a right to a stall, I mean, there is no human  
13 rights allegation, they are not saying that, you know, they  
14 are throwing them out because they are black or because they  
15 are Hispanic or anything like that, there is no allegation  
16 like that, it is purely I testified at some administrative  
17 hearing, therefore, that act doesn't have any retaliation  
18 provision in it I am aware of. So, again, unless they come  
19 here and show the Court they have some legal right under the  
20 contract to stay there, and some right to renew, which they  
21 don't, something under the HBPA agreement, you know, then  
22 there is not a likelihood of success on the merits so that  
23 element goes against them.

24 We have already talked about irreparable harm,

1 they can't show irreparable harm. All they have to do is  
2 move their horses to another barn. This business about how  
3 it's going to hurt the horses and they are not going to be  
4 able to compete is bunk as I mentioned statistically.

5 The third element would be whether they have  
6 adequate remedy at law and I think they clearly do. I mean,  
7 if they have to go and pay for a stall someplace else, you  
8 know, that is an economic damage they could assert down the  
9 road, you know, they can make a claim over that. If for  
10 some reason we did wrongfully evict them, they can get a  
11 judgment against the Track for having to pay for the stall  
12 someplace else, that is economic harm.

13 The balance of hardship is another element you are  
14 supposed to look at and it would visit a great hardship on  
15 my client to have their stall agreements tied up in court so  
16 they can't make a decision to get the best horses in.  
17 It is critical they be able to get the best horses in there  
18 and get these stalls filled with quality horses. They may  
19 have a hardship they have to move the horses but these  
20 horses like I said are moved all of the time. These folks  
21 can find other stall spaces. They have plenty of stall  
22 spaces out there outside of the racetrack for them to put  
23 these horses in. Again, the hardship is heavier on my  
24 clients who are trying to run a business and having their

1 every decision reviewed in court.

2 So based on all of those I don't think they meet  
3 any elements for issuance of a TRO.

4 THE COURT: All right, thank you.

5 MR. PETERSON: We ask it be denied.

6 THE COURT: Thank you, Mr. Peterson.

7 Mr. Hammer, let's go back over to you, sir.

8 Mr. Hammer, I asked Mr. Peterson a bunch of  
9 questions as he was going along, I asked a few of you too,  
10 sort of got more on a roll, I guess, as Mr. Peterson was  
11 going along, so if you remember those issues that you wanted  
12 to address that I maybe asked Mr. Peterson and had not asked  
13 you, if you would like to address them, go ahead.

14 MR. HAMMER: First, let's begin with the concept  
15 of the revocable stall license agreement not being  
16 negotiated. Mr. Watson is present in the courtroom this  
17 morning and Mr. Watson himself negotiated the prior stall  
18 agreement that was --

19 THE COURT: Who is Mr. Watson?

20 MR. HAMMER: Right back here.

21 THE COURT: Let's see a hand, okay, all right.

22 MR. HAMMER: I can tender his testimony if you  
23 wish on this issue but he did negotiate on behalf of the  
24 HBPA the prior stall agreement.

1 THE COURT: A former president of that  
2 association?

3 MR. HAMMER: Yes, Your Honor.

4 THE COURT: All right.

5 MR. HAMMER: So it is just flatly wrong to say  
6 that this has not been the subject of negotiation in the  
7 past. Even if it hadn't been, the no waiver provision which  
8 I pointed out to Your Honor in my opening statement, would  
9 still allow the HBPA to bring this issue forward but it has  
10 been negotiated and this particular contract that you have  
11 marked as Exhibit 2 has not been negotiated. They have  
12 changed the terms of it from one year down to six months.  
13 They have changed other terms within the body of it.  
14 Most egregious of all they claim that it supersedes the  
15 actual agreement between the HBPA and the Charles Town  
16 Races. That cannot be done. You can't both recognize the  
17 HBPA as an exclusive bargaining agent for its members and at  
18 the same time turn around and impose unilaterally an  
19 agreement that purports to supersede the contract so that  
20 simply --

21 THE COURT: So your representation was that in the  
22 past that the HBPA had negotiated the wording of this  
23 contract?

24 MR. HAMMER: Various terms in this have been

1 negotiated in the past. This is a new contract.

2 THE COURT: But I take it that you don't argue  
3 with the fact that Mr. Peterson makes that it has always  
4 been the Racetrack itself which has allocated the stalls?

5 MR. HAMMER: I do disagree and here is why, yes,  
6 they make the decision as to equitable allocation of stalls  
7 as required by the contract that is an overriding term  
8 within the contract that allocation has to be equitable, we  
9 are here today because stripping all the stalls away from  
10 some of my clients and some of the stalls away from others  
11 is not equitable and the issue of what is equitable or not  
12 equitable is on its face a term of the main agreement and  
13 subject to the arbitration clause of the agreement.

14 Mr. Peterson is right in the sense that the Court  
15 shouldn't be interfering in the agreement in the decision  
16 what is equitable or not, it is the arbitrators who shall by  
17 agreement make that decision. So the HBPA is here to say  
18 you are not abiding by the agreement and we want a stay so  
19 that we can invoke the arbitration provision of the  
20 agreement.

21 Now, the idea we could get arbitrators appointed  
22 and get an arbitration hearing conducted within the time  
23 period between August 29th and when the notice was served on  
24 these people to get out of their stalls and today is

1 preposterous, it simply can't happen.

2 THE COURT: But in listening to what you just said  
3 is it the intention or desire of the HBPA to have an ongoing  
4 arbitration to review all stall allocation decisions?

5 MR. HAMMER: It is the intent of the HBPA to  
6 negotiate within the contract to come up with agreeable  
7 terms as to what is equitable in stall allocation because  
8 the parties agree that the livelihood of the horsemen is at  
9 stake by stall allocation. You can't have it both ways.  
10 Mr. Peterson has argued that he says it doesn't make a  
11 difference, people do just fine outside, his own client  
12 agreed it is essential to the livelihood to have these  
13 stalls so he can't come back and say something contrary to  
14 this agreement.

15 Now, Ms. Mawing is here and she can testify, I  
16 will proffer her testimony if need be or put her on the  
17 stand, she will testify about the harm that occurs in trying  
18 to move horses that don't want to be moved, the risk of  
19 injury to those horses, the need to anesthetize those horses  
20 which means they are then not eligible to be in races. She  
21 has an upcoming stakes race this next Saturday so the idea  
22 her horses aren't competitive and aren't quality horses is  
23 absurd. She is in. She has made all of her appearances  
24 required under the agreement. She hasn't violated any



1 term. What she has done is she testified in the Funkhouser  
2 matter and as a result had the number of stalls reduced from  
3 11 down to five. She has been quite vociferous as both an  
4 individual member of the board and in raising concerns under  
5 the West Virginia Pesticide Act about the improper  
6 distribution of pesticides, which we cite in the complaint  
7 at paragraph 48, which does evince public policy of West  
8 Virginia and the result of that pesticide distribution was  
9 to her knowledge and belief the death of one of her animals  
10 and the death of a companion goat. In retaliation for those  
11 complaints for calling the West Virginia Department of  
12 Agriculture onto the premises of the Racetrack they have  
13 taken all of her stalls from her.

14 Now, Mr. Peterson says there is no basis then to  
15 say, well, the Court can litigate that there is no public  
16 policy, it is in the contract, if she is acting on behalf of  
17 the HBPA or its members and she has racing concerns and she  
18 feels she is discriminated against in stall allocation, then  
19 in the contract on page 13 paragraph 11B they have already  
20 agreed not to discriminate against her, that is a material  
21 term of this contract that is subject to arbitration.  
22 So this Court needs to stay taking away her stalls so that  
23 she does have time to invoke arbitration and allow the  
24 matter to be decided.

1 THE COURT: Well, Mr. Peterson asks the question  
2 why have you not done that before rather than coming before  
3 the Court for a TRO?

4 MR. HAMMER: Why who has not?

5 THE COURT: Asked for arbitration and simply  
6 notified the Track you wish this to be the subject of  
7 arbitration.

8 MR. HAMMER: We will. I have been retained in  
9 this matter recently. We will indeed ask for arbitration.  
10 The more pressing matter right now is she is going to be  
11 forced to leave her stalls and leave the free stalls that  
12 she needs as a trainer to maintain her business. Being a  
13 trainer is a very competitive business and if you don't have  
14 access to the free stalls that are there she is out of  
15 business.

16 THE COURT: But, Mr. Hammer, Mr. Peterson argued  
17 that there is an over abundance of demand for these stalls  
18 and that there are other horsemen who are members of the  
19 HBPA who wish to have those very same stalls that are being  
20 deprived of those stalls by, I guess, Ms. Mawing's presence  
21 there.

22 MR. HAMMER: He concedes there are 140 vacant  
23 stalls at the present time, he acknowledged that some owners  
24 have more than 40 stalls, that goes to the issue of

1 equitable allocation of the stalls which is a contractual  
2 issue and subject to mandatory arbitration. So we are  
3 raising the issue and we are going to arbitrate that issue.

4 THE COURT: Since you say that this revocable  
5 stall licensing agreement has in the past been the object or  
6 subject of negotiation between the HBPA and the Track, do  
7 you have examples of earlier versions of it that specify  
8 some sort of equitable mechanism different than what appears  
9 in the document before us?

10 MR. HAMMER: The mechanism is laid out on that  
11 contract and the terms. We are looking for the older one  
12 now. The terms of the older one are different. In the past  
13 this has been provided to the HBPA because there has not  
14 been the issue of equitable allocation and the HBPA has not  
15 invoked an arbitration right. There is an issue of  
16 equitable arbitration now so we are invoking the right.  
17 Whether we did or didn't invoke it in the past is of no  
18 import whatsoever because, quite frankly, there is a no  
19 waiver provision that the Track agreed to in this contract  
20 so the past practice of the parties whether they agreed to  
21 another stall agreement or not is totally irrelevant.

22 THE COURT: But you, Mr. Hammer, when you say that  
23 this has always been the subject of negotiation before  
24 between the language on page 14 that Mr. Peterson was

1 pointing out says that the terms and conditions for all  
2 stall applications shall be determined by and set forth in  
3 application by the Charles Town Races, in other words, it  
4 seems to say in that language that the Racetrack itself is  
5 able to set the terms of the negotiation of the revocable  
6 stall licensing.

7 MR. HAMMER: You read that sentence in isolation  
8 from the stall section, the stall section says equitable  
9 allocation is essential and that is a paragraph of that same  
10 section, so the determination, yes, they can make the  
11 determination, can they do so in a random manner, no. Can  
12 they do so in a manner that is discriminatory? No, they  
13 have to do it in a manner that is equitable. The HBPA now  
14 argues what they are doing is not equitable. On its face  
15 that is a mandatory subject of arbitration it says right  
16 above it.

17 Now, all that Mr. Peterson has argued in denying  
18 what we have said is that there is a dispute as to whether  
19 or not the parties have complied with the terms of their  
20 contract, collective bargaining agreement there is a  
21 dispute, the purpose of today is not to get into all of the  
22 facts of that dispute as the Court made clear, but there is  
23 a dispute, a disagreement, and where that disagreement  
24 existed under paragraph B of the top of page 13 it shall be

1 arbitrated no exception. So the only choice this Court has  
2 under the Federal Arbitration Act is to enforce the  
3 validity of this agreement and to stay this matter and to  
4 allow the parties to arbitrate. That is all that this Court  
5 has authority to do. That is all that Judge Steptoe will  
6 ultimately have authority to do because the federal law is  
7 supreme on this issue.

8 Again, if you want to hear any facts  
9 specifically Ms. Mawing is here and ready to testify if need  
10 be about the damage and danger to horses.

11 THE COURT: Well, I am somewhat reluctant to wade  
12 into the facts knowing that Judge Steptoe will probably  
13 revisit this issue and also against the backdrop of  
14 apparently upon Mr. Peterson's representation that  
15 Judge Steptoe has heard cases of this nature before and has  
16 some sophistication in the area that I rather plainly lack.

17 MR. HAMMER: I did want to address that because  
18 the agreement that was at issue in the Yetsook case was a  
19 different agreement, not this same stall license agreement,  
20 so we'll be prepared for this and the argument that he is  
21 going to wish to make will not be applicable to this same  
22 stall agreement. Again, I don't want to plunge into that  
23 but I do want Your Honor to maintain the status quo long  
24 enough that we can invoke the arbitration agreement which

1 the parties have agreed to and allow that process to take  
2 place as 9 U.S.C. Section 2 requires.

3 THE COURT: All right, thank you very much,  
4 Mr. Hammer.

5 Mr. Peterson, going back over to you for a moment.  
6 You began your remarks by saying that since arbitration is  
7 available under the contract that the Plaintiff could simply  
8 have sought arbitration instead of having the Court come in  
9 and wade in and try to tinker with or fine-tune some aspect  
10 of the agreement between these parties and to have the  
11 arbitrator that is provided for under the contract do that.

12 Since Mr. Hammer in his remarks seems to want just  
13 that, is that something that is agreeable to the Track?  
14 I mean, Mr. Hammer is saying he has the right to it not that  
15 it needs to be agreed.

16 MR. PETERSON: I think the language is clear to  
17 the extent this involves interpretation of this agreement  
18 that has to be arbitrated because of the mandatory language  
19 there shall. My point is that these stall agreements aren't  
20 part of this agreement and there is a requirement in here  
21 that makes stalls available. When he is talking about the  
22 equitable distribution or equitable allocation of the  
23 stalls, that doesn't say anywhere that this agreement has to  
24 provide any certain right to maintain a stall, it is just

1 that stalls that are allocated have to be done so on an  
2 equitable basis.

3 If they wanted to include language in here that  
4 there has to be some sort of balancing of the equities  
5 before you renew a license, it would have had to have been  
6 stated in this agreement, I mean, but it is not in here.  
7 The fact is that is not consistent with the clear language  
8 of paragraph D that says the terms and conditions for all  
9 stall applications shall be determined by Charles Town  
10 Races. That gives them sole discretion to determine what is  
11 in this agreement. If they wanted to put something in there  
12 that you are entitled to due process or some other right or  
13 balancing of the equities, or we have to show that it is  
14 fair, you know, consistent with some requirement they have  
15 that would have been in here but it is not in here,  
16 therefore, they are not entitled to it. This agreement is  
17 separate from the HBPA agreement that is why we feel that  
18 this agreement is not subject to arbitration. We disagree  
19 with that. But I was saying to the extent that they are  
20 claiming that the HBPA agreement is in dispute here then why  
21 didn't they put us on notice months and months ago that they  
22 disagreed with the language in here?

23 THE COURT: How long?

24 MR. PETERSON: This is not equitable for them to



1 come here having delayed until the very last minute and then  
2 ask for injunctive relief to challenge this agreement when  
3 they could have done that months ago and not visited any  
4 harm upon my client because this probably could have been  
5 arbitrated and decided within a six month period since this  
6 agreement has been in effect.

7 THE COURT: How long has this particular form of  
8 the agreement been in use?

9 MR. PETERSON: January 1st of 2008 was the  
10 beginning of these agreements. I believe it was drafted  
11 before then. Do you know, Dicky?

12 THE COURT: But the ones that had dates earlier so  
13 this six month date so all of them now have six month dates?

14 MR. PETERSON: They are all six month dates.

15 THE COURT: Mr. Hammer represented that the  
16 earlier ones had one year dates?

17 MR. PETERSON: I believe that is true, correct.

18 THE COURT: Was that under a different management?

19 MR. PETERSON: No, it was under the same  
20 management. They revised the agreement, I mean, this is a  
21 new agreement.

22 THE COURT: How recently has it been revised?

23 MR. PETERSON: I believe 2007.

24 THE COURT: Is this the first six months set?

1 MR. DICKY: Yes.

2 MR. HAMMER: Yes, January 1st was the beginning of  
3 the six month period. If they had a problem with that six  
4 months why didn't they challenge it back in January? As a  
5 matter of fact, these were set to expire in June and at the  
6 end of June they extended them because they were like I said  
7 they are trying to go through the process of determining,  
8 you know, what are the best horses to get in the stalls and  
9 they extended it through the end of August and then gave  
10 notice at the end of August.

11 THE COURT: Somehow is there a different process  
12 in place right now who is determining who gets the stalls  
13 than had previously been applied to these decisions?

14 MR. PETERSON: Excuse me.

15 THE COURT: Is the process now somehow different  
16 in determining who gets the stalls than had been in the  
17 past?

18 MR. PETERSON: No, this is the same process that's  
19 always been used. The language in the agreement tightened  
20 up for the Track's benefit to make it clear they have, I  
21 mean, you know, paragraph 4 states, "It is understood and  
22 agreed this is not a lease of any space but is merely a  
23 revocable license granted by the CTRS only on the terms and  
24 conditions set forth. CTRS reserves the unrestrictive right

1 to decline stall space and reduce the number of stalls  
2 allocated, revoke this license at will for any reason or no  
3 reason."

4 THE COURT: Mr. Hammer, is that the language?

5 MR. PETERSON: All the folks signed this and none  
6 of them objected to it as a contract of adhesion.

7 THE COURT: Mr. Hammer, is the language startling  
8 different than the language of the previous revocable stall  
9 licensing agreements?

10 MR. HAMMER: I don't know as to that particular  
11 language, I don't have it in front of me, but the number of  
12 stalls has changed, Your Honor. Most importantly here do  
13 bear in mind that the contract does contemplate arbitration  
14 of this because page 4 it says, "Charles Town Races does  
15 agree that it shall negotiate with and conduct any business  
16 which is the subject of this Agreement and any matters  
17 reasonably related to any provision of this Agreement with  
18 the duly elected officers of the HBPA or their duly  
19 designated representatives."

20 So Mr. Peterson tells you that if they want to put  
21 something in the contract they should have, the contract  
22 already contemplates that matters reasonably related to this  
23 contract are subject of arbitration, stalls are specifically  
24 subject of this contract and equitable allocation is

1 specifically subject of this contract, so the issue of how  
2 it is done which they have unilaterally changed the  
3 purported claim that this stall license agreement supersedes  
4 the contract is clearly improper and we want to arbitrate  
5 those issues. They can't argue against their own contract.  
6 They agreed by this contract to be legally bound to do so  
7 and instead they are acting unilaterally in the matter and  
8 it deprives my clients of the livelihood that they  
9 acknowledged in the agreement was essential to have those  
10 free stalls and they agreed to the terms already. So I  
11 don't see how this Court has any choice but to grant this  
12 stay and to allow arbitration to occur unless it's the  
13 Court's decision to plunge into all of these issues which I  
14 don't think that you can under the Supremacy Clause and  
15 9 U.S.C. Section 2 but if that is the Court's intent  
16 certainly we'll be back to do just that.

17 THE COURT: Mr. Peterson.

18 MR. PETERSON: They are forgetting when they're  
19 saying that the equitable allocation of stalls entitled them  
20 to challenge this agreement under HBPA agreement because it  
21 is covered or reasonably related they're forgetting that  
22 paragraph D of that section removes from consideration the  
23 language that is contained in this agreement. It is  
24 expressly stated in here that they don't have any right to

1 determine the conditions under which these stalls are  
2 allocated terms and conditions for stall applications are  
3 set forth by Charles Town Races and Slots. that there is no  
4 implied coverage of this agreement in here because there is  
5 an expressed provision stating that it won't be covered that  
6 is given to my client as sole discretion. There is nothing  
7 in here that says they have the right to negotiate over  
8 this. So to the extent we are arguing here about whether  
9 this is arbitrable, I don't feel that it is, but that is  
10 really not the point. The point gets back to the factors  
11 that you look at when you are issuing a temporary  
12 restraining order, the likelihood of success on the merits,  
13 irreparable harm which I think clearly has not been shown,  
14 and the burden on my client versus the burden on his client  
15 whoever they are, and when you look at those factors --  
16 unclean hands that they have in coming in here at the very  
17 last minute when they could have at the very latest weeks  
18 ago come in and applied for this relief if not months ago,  
19 if they're arguing over language in the agreement itself,  
20 clearly it was in favor of my client not to have a  
21 temporary restraining order entered until this thing gets  
22 adjudicated either through arbitration or through the  
23 courts.

24 MR. HAMMER: You know, back to the arbitration

1 clause whether any party has complied with the terms or  
2 conditions of this agreement is arbitrable itself so when he  
3 says he doesn't think that this is the subject of the  
4 arbitration agreement, the arbitration agreement at page 13  
5 says that that very issue is properly arbitrable so whether  
6 they have complied with the terms and conditions in doing  
7 what they have done is the subject of arbitration. Again,  
8 this is all locked up by this contract. There is no waiver  
9 under this contract they agreed to that. So whatever they  
10 want to argue about the two weeks Ms. Mawing has had since  
11 being told she will have no stalls left is simply not  
12 applicable. She is here, Mr. Yetsook is here, the HBPA is  
13 here and they demand their right to arbitrate under the  
14 agreement that the Racetrack entered into. This Court has  
15 no choice pursuant to the Federal Arbitration Act but to  
16 enforce this agreement and send us to arbitration.

17 MR. PETERSON: There is no requirement under the  
18 Federal Arbitration Act that the Court enter a temporary  
19 restraining order, none, that is completely within this  
20 Court's discretion. What I am saying is even if it is not  
21 arbitrable, but even if it is, there is no ground under  
22 state law to enter into a TRO and restrain my clients from  
23 determining who can have these stalls in the interim. That  
24 is my point, Your Honor.

1 THE COURT: All right, thank you very much.

2 I will take a recess.

3 (Brief recess.)

4 THE COURT: It's always a pleasure to get a chance  
5 to sit in any case that has two such outstanding lawyers as  
6 we have experienced here this morning. This high level of  
7 lawyering is really a pleasure to watch and see lawyers who  
8 are able to stand not only energetically and represent  
9 clients the way that both of you have, but to answer the  
10 Court's questions in a cogent and informative way because,  
11 frankly, all of this is very new to me and I had only the  
12 briefest of opportunity to go through the pleadings that  
13 were laid before us yesterday so I needed to ask questions  
14 of both sides. I think that you have both ably answered the  
15 questions that I have peppered both sides with all through  
16 the morning. So I want to tell you I do appreciate that.

17 In looking over not only the petition or the  
18 complaint and the application for this TRO and the  
19 supporting documentation, being the agreement between the  
20 HBPA and the Racetrack and the revocable stall licensing  
21 agreement, it appears to the Court that when you consider it  
22 against the backdrop of the fact that all of the stalls are  
23 held by members of the HBPA, that there are more members of  
24 the HBPA who wish and need stalls than there are available,



1 and the fact that these are let under the terms of the  
2 agreement by the Racetrack on terms that it sets, and the  
3 fact that there are numerous issues that are perhaps grist  
4 for the mill of an arbitrator, it appears to the Court that  
5 the Plaintiff does not support a substantial likelihood of  
6 success to the extent that the Court feels that it needs to  
7 grant the TRO nor is there a case made we feel for  
8 irreparable harm since this is a matter of transporting  
9 horses, and if the arbitrator or this Court with Judge  
10 Steptoe presiding on what may remain of this determines that  
11 there has been some improper or impermissible or unlawful  
12 basis for these determinations that are somehow actionable  
13 that there are adequate remedies through financial damages,  
14 therefore, I feel that the case for TRO is not strong enough  
15 that the Court will not grant one today.

16 The matter can be and I take it will from  
17 Mr. Hammer's remarks be subject to arbitration and Judge  
18 Steptoe would have jurisdiction in this case beyond this  
19 point.

20 I will note, Mr. Hammer, the objection that you  
21 would make on behalf of the HBPA and, Mr. Peterson, I would  
22 ask that you would write the order for today showing  
23 Mr. Hammer's objection if you would, please, and we are in  
24 recess.

(Whereupon, the proceedings concluded.)

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## CERTIFICATE

I hereby certify that the transcript(s) in the above case meet the requirements of the Code of the State of West Virginia. And all rules pertaining thereto as promulgated by the Supreme Court of Appeals.



Marcia L. Chandler, RPR



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1 AMERICAN ARBITRATION ASSOCIATION	1 APPEARANCES:
2	2
3 CHARLES TOWN HORSEMAN'S, :	3 On behalf of the Claimant:
4 BENEVOLENT AND PROTECTIVE :	4 DAVID M. HAMMER, Esquire
5 ASSOCIATION, INC., and :	5 Hammer, Ferretti & Schiavoni, 408 West King
6 TINA MAWING, : NO. 55-196-Y-00015-12	6 Street, Martinsburg, West Virginia 25401
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9 PNGI CHARLES TOWN GAMING, :	9 E-mail: dhammer@hfslawyers.com
10 LLC, :	10
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12	12 HARRY P. WADDELL, Esquire
13 * * *	13 Waddell Law Offices, 300 West Martin Street,
14 Deposition of Malcolm G. Barr	14 Martinsburg, West Virginia 25401
15 Wednesday, March 13, 2013	15 Telephone: (304) 263-4988
16 * * *	16 Fax: (304) 262-2498
17 a witness herein, taken on behalf of the	17 E-mail: hwad50@aol.com
18 respondent in the above-entitled cause of action	18
19 pursuant to notice and the Rules of the American	19
20 Arbitration Association by and before Tamela G.	20
21 Sheeler, RPR, CLR, Notary Public within and for	21
22 the State of West Virginia at the offices of	22
23 Streski Reporting & Video Service, 300 Foxcroft	23
24 Avenue, Suite 300, Martinsburg 25401, West	24
Virginia, commencing at 11:01 a.m.	
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5 Stevens & Lee, PC, 111 North Sixth Street,	5 Examination By Mr. Hammer ..... 33
6 Reading, Pennsylvania 19603	6 Examination By Ms. Scrivani ..... 42
7 Telephone: (610) 478-2086	7 Examination By Mr. Hammer ..... 45
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9 E-mail: sasc@stevenslee.com	9
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Page 5

1 \* \* \*

2 MALCOLM G. BARR

3 being first duly sworn, was examined and deposed

4 as follows:

5 EXAMINATION

6 BY MS. SCRIVANI:

7 Q. Good morning, Mr. Barr. We met off

8 the record. But for purposes of the record, my

9 name is Stacy Scrivani and I'm an attorney with

10 the law firm of Stevens and Lee. And in this

11 matter I represent PNGI Charles Town Races in an

12 arbitration that's been brought against it by

13 Tina Mawing.

14 You understand you're here today to

15 give a deposition in that matter?

16 A. Yes.

17 Q. Sir, have you ever given a deposition

18 before?

19 A. Yes.

20 Q. How many years ago?

21 A. 30-something.

22 Q. What type of case was that, just

23 generally?

24 A. It was -- it had to do something with

Page 7

1 responses and use words as opposed to uh-huh or

2 huh-uh.

3 A. I understand.

4 Q. Additionally, I'm going to do my best

5 to try to ask questions that are as clear as

6 possible, but I don't always succeed at that. So

7 if you do not understand me, please ask me to

8 rephrase the question or let me know you don't

9 understand. If you answer my question, I'm going

10 to assume that you understood; is that fair?

11 A. Yes.

12 Q. Sir, I don't expect us to be here

13 very long today, but if at any time you would

14 like to take a break, please let me know. I

15 would just ask that if I have a question pending

16 you answer that question and then we can take the

17 break.

18 A. That's good.

19 Q. Finally, you understand that you are

20 under oath today?

21 A. Yes.

22 Q. Are you suffering from any mental

23 conditions or physical conditions that prevent

24 you from testifying truthfully?

Page 6

1 a town in Canada.

2 Q. Okay.

3 A. I was a reporter at the time and I

4 didn't -- wasn't allow to say much.

5 Q. Okay.

6 Sir, I'm going to give you a couple

7 of instructions that will hopefully make the

8 deposition move more smoothly.

9 The first is that, as you can see, we

10 have a court reporter here who is taking down

11 what is being said. So it's important that only

12 one of us speak at a time so she can accurately

13 record. So I'm going to ask, I'm going to let

14 you know that I will make every effort to make

15 sure I do not start a new question until you

16 finished your answer, if you would please wait

17 for me to finish my question until you begin your

18 answer; is that fair?

19 A. Sure.

20 Q. Additionally, because this is being

21 recorded stenographically, you will need to give

22 audible responses. A shake of the head, a nod of

23 the head, cannot be accurately recorded. So I'd

24 ask that you please verbalize all of your

Page 8

1 A. No, ma'am.

2 Q. Are you taking any medication that

3 would prevent you from testifying truthfully?

4 A. No.

5 Q. Sir, are you being represented here

6 today by either Mr. Hammer or Mr. Waddell?

7 A. Nobody.

8 Q. Do you know why you are here today?

9 A. I know I'm here in the matter of the

10 Tina, or Anthony Mawing, or both.

11 Q. Were you aware, prior to being

12 contacted by my office to come for this

13 deposition, that Miss Mawing had filed a lawsuit

14 against PNGI?

15 A. Yes.

16 Q. How were you aware of that?

17 A. I was president of a horse racing

18 syndicate about four or five years ago. And I

19 think it came up at a meeting of the Horseman's

20 Benevolent Association and later between she and

21 I when the question of stabling our horses off

22 track arose.

23 Q. Okay.

24 Were you ever a member of the board



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1 of directors of the Horseman's Benevolent  
2 Protective Association in Charles Town?

3 A. Invited, but no.

4 Q. So when you say it was a meeting, was  
5 it a meeting of the general membership?

6 A. Yes. And I don't even recall that it  
7 was part of the agenda, it just came up, that's  
8 when I first learned of it. But probably not as  
9 part of the agenda of the meeting.

10 Q. Then you said it came up again  
11 privately between you when a question of stabling  
12 arose. Can you tell me a little bit about that?

13 A. Yes. I have had several trainers at  
14 Charles Town, among other tracks. Tina Mawing  
15 was the first one to call me and tell me that  
16 they were stabling their horses off the track.  
17 She stressed, I think, it's not too far and  
18 convenient -- and it's convenient and we'll ship  
19 the horses in for training.

20 And I said -- I think first words out  
21 of my mouth, as I recall, had to do with, How  
22 much extra will that be? And I think it was  
23 about \$15 a day.

24 Q. Per horse?

Page 10

1 A. Per horse, yeah. \$15 or \$20, I  
2 forget.

3 Q. Did you have a concern about that  
4 additional \$15 per day?

5 A. Only that I had to sell it to my  
6 partners. We had probably 15 or 20 investors at  
7 the time. And I needed to know pretty  
8 specifically then or -- I'm not answering  
9 specifically now. To sell them on the idea that  
10 Tina was a trainer for us. And that it would  
11 cost extra money.

12 Q. Okay.

13 I'm going to come back to that, I  
14 want to sort of get a little historical  
15 information first.

16 A. Uh-huh.

17 Q. Did you know that Miss Mawing had  
18 identified you as a witness in this lawsuit?

19 A. Not until I got a call before I went  
20 on vacation two or three weeks ago from a  
21 gentleman I recall as Nick.

22 Q. Just for the record, that's Nick  
23 Pennington and he works in my office.

24 A. That's right, that's right.

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1 Q. When you heard from Mr. Pennington  
2 that we were trying to schedule your deposition,  
3 did you then speak with Miss Mawing about why she  
4 might have identified you as a witness?

5 A. I called and asked her why at this  
6 late date I was being called in. She said, I'm  
7 sorry, I didn't realize you were on the list.

8 Q. What else --

9 A. I said, that's okay, don't worry  
10 about it.

11 Q. What else did you and she speak about  
12 during that call?

13 A. Pretty much about the case itself. I  
14 asked her, is this still about the situation?  
15 And I couldn't remember what it was specifically.  
16 It was a few years ago. She said, Yes, it's  
17 still dragging on.

18 Q. Did she tell you anything about her  
19 view of the case?

20 A. Let me see. She -- she said it  
21 was -- she said it was still about the, I think,  
22 the off-track stabling of the horses.  
23 And I said, Oh, that issue. Or some response  
24 like that. And that I kind of rhetorically said,

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1 Oh, that's still going on, is it?

2 And she said yes. And she apologized  
3 again for, as she put it, dragging me into it  
4 since, I guess, so long had elapsed since I had  
5 been involved.

6 Q. Did she tell you what she expected  
7 you to testify about?

8 A. No.

9 Q. Did she tell you what she had  
10 communicated in the lawsuit would be your  
11 testimony?

12 A. Pardon?

13 Q. Did she tell you what she had told  
14 Penn National your testimony would be in this  
15 case?

16 A. No.

17 Q. Did you have any other discussions  
18 with Miss Mawing between the time Mr. Pennington  
19 called you and today?

20 A. No.

21 Q. Did you have any discussions with  
22 Anthony Mawing between the time Mr. Pennington  
23 called you and today?

24 A. Yes.



Page 13

1 **Q. How many times have you spoken to**  
 2 **Anthony Mawing?**  
 3 A. I spoke to Anthony when I first got  
 4 Pennington's call.  
 5 **Q. Why did you --**  
 6 A. Well, I called him to find out what  
 7 it was all about.  
 8 **Q. Did you --**  
 9 A. And he told me. Sorry.  
 10 **Q. I'm sorry.**  
 11 **What did Mr. Mawing tell you?**  
 12 A. Because it was a cell phone call and  
 13 I think he was at the track, he told me very  
 14 little that was intelligible, we kept breaking  
 15 up. And I said, I know you're working, Anthony.  
 16 I'll talk to Tina at some point. Then.  
 17 The second time I talked to him was  
 18 just this morning when I called from  
 19 the -- called him offhanded, there was nothing  
 20 better to do from the car. Today we didn't talk  
 21 about anything to do with this, we just exchanged  
 22 pleasantries, I guess. And asked him if he knew  
 23 his way here and if he didn't I would -- he told  
 24 me he was coming this morning. And I asked him

Page 15

1 was William Joyce, who then was the justice  
 2 department attorney to become an immigration  
 3 judge. And now he is in private immigration  
 4 practice in Boston.  
 5 **Q. So initially the partnership**  
 6 **consisted of you and Mr. Joyce?**  
 7 A. Right.  
 8 **Q. What was the purpose of the**  
 9 **partnership?**  
 10 A. To bring people together to, and sell  
 11 partnership shares in thoroughbred horses.  
 12 **Q. All thoroughbred horses?**  
 13 A. Yes.  
 14 **Q. Was this a breeding operation or**  
 15 **simply an ownership operation?**  
 16 A. This was a -- began as an ownership  
 17 of horses that were racing, actively racing.  
 18 Initially in 1996 we incorporated and became the  
 19 Hampshire Alliance, Inc. registered in Delaware.  
 20 At which point we bred, we began breeding from  
 21 two mares who we had racing and ended up being  
 22 retired.  
 23 **Q. From 1989 to 1996, did you have any**  
 24 **horses in -- is it fair for me to call this a**

Page 14

1 if he knew his way here, if he didn't, I could  
 2 tell him.  
 3 **Q. But you didn't talk about your**  
 4 **testimony or the lawsuit?**  
 5 A. Nope.  
 6 **Q. Okay.**  
 7 **Have you ever at any time had a**  
 8 **discussion with Mr. Hammer?**  
 9 A. No, ma'am.  
 10 **Q. How about Mr. Waddell?**  
 11 A. Neither one.  
 12 **Q. Anybody from either of their law**  
 13 **offices?**  
 14 A. I don't -- I don't think so.  
 15 **Q. Okay.**  
 16 **Sir, when did you first become**  
 17 **involved in horse racing?**  
 18 A. 1989.  
 19 **Q. What was that involvement?**  
 20 A. That was the formation of the  
 21 Hampshire Racing Partnerships, it was an L.L.C.,  
 22 International Press Club in Washington, DC. That  
 23 was a formation meeting of the L.L.C. and the  
 24 initial perspective partners. My partner then

Page 16

1 **syndicate?**  
 2 A. Yes.  
 3 **Q. Did you have any horses in the**  
 4 **syndicate that raced at Charles Town?**  
 5 A. Probably -- yes. Yes.  
 6 **Q. How many horses were owned by the**  
 7 **syndicate in that same period '89 to '96?**  
 8 A. Off and on we would have gone  
 9 through -- this is a very rough estimate, 40 to  
 10 60 claiming horses.  
 11 **Q. What other tracks in addition to**  
 12 **Charles Town did those horses that were owned**  
 13 **between '89 and '96 race at?**  
 14 A. They were all raced specifically at  
 15 Laurel and Pimlico. The number of times we raced  
 16 at Charles Town at that period would have been  
 17 probably less than five percent of our races.  
 18 **Q. Were they always transported in for**  
 19 **those races, as opposed to being stalled locally?**  
 20 A. Yes.  
 21 **Q. In 1996 when you -- is it fair to say**  
 22 **that you added breeding to the ownership?**  
 23 A. Yes.  
 24 **Q. Okay.**

Page 17

1 Did you continue to own approximately  
2 40 to 60 horses after 1996?

3 A. Let me explain the 40 to 60.

4 Q. Sure.

5 A. These came in in groups of one --  
6 well, not a group of one. But they came in as  
7 single horses. They were claimed from the track  
8 for certain of, a number of partnerships, which  
9 usually were considered of ten owners. And each  
10 partnership would be for a period of, last for a  
11 period of two years. And we would probably run  
12 four or five claiming horses depending on the  
13 success or lack of it through the partnership,  
14 individual partnerships.

15 At that time we were running probably  
16 an average of two of the ten person partnerships.

17 Q. When you say at that time, you're  
18 talking about 1996?

19 A. Up to that time, yes. It was one and  
20 two partnerships. And later we developed into,  
21 up to five and six partnerships.

22 Pretty well always with 10 and not  
23 more than 14 investors.

24 Q. The partnerships all had different

Page 18

1 names?

2 A. Yes.

3 Q. But they had Hampshire in them  
4 somehow?

5 A. Yeah, mostly, sometimes we'd name  
6 them after -- yes, it would be the Hampshire  
7 Saratoga, for example, the Hampshire Saratoga  
8 Partnership, the Hampshire Laurel Partnership, et  
9 cetera. Those were inside the umbrella, the  
10 L.L.C. umbrella and later the corporate umbrella.

11 Q. Did there come a time when the  
12 corporation had partnerships that were racing on  
13 more of a full-time basis at Charles Town?

14 A. Yeah, the time came in the early  
15 2000s. Let me see, I retired from the federal  
16 government in 1996 and we moved to Front Royal  
17 and my wife retired in 19 -- in 2002. And due  
18 to the proximity of the Charles Town Racetrack,  
19 we hired our first full-time trainer there in,  
20 sometime after 2002.

21 Q. Who was that?

22 A. That was a lady whose name escapes me  
23 that we only had her very briefly. She claimed a  
24 horse for us, the horse broke down, we didn't

Page 19

1 have any more to do with her. I can't remember  
2 her name.

3 The first major trainer we had was  
4 Jeff Runco.

5 Q. Do you recall about what year, what  
6 year or years you had him?

7 A. Yeah, Runco would have come in around  
8 2004 or '05, probably 2004.

9 Q. How long did he -- let me back up.

10 In what name, what named partnership  
11 was running horses at Charles Town?

12 A. We ran under, in the program we ran  
13 under Hampshire Racing Partnerships still.

14 Q. Okay.

15 How long did Mr. Runco act as trainer  
16 for the Hampshire Racing Partnerships?

17 A. I think about two years.

18 Q. Why did he cease being the trainer?

19 A. In a nutshell I fired him.

20 Q. Why?

21 A. He wasn't -- he is one of the top  
22 trainers in Charles Town but he wasn't  
23 claiming -- his success of claiming for us wasn't  
24 like we expected.

Page 20

1 Q. So was that in '06 or '07 when he  
2 ceased being a trainer for the Hampshire Racing  
3 Partnerships?

4 A. I can't be precise. That's around  
5 about it.

6 Q. Was another trainer then hired?

7 A. Yes. We went on to -- oh, dear.  
8 Cuttino, C U T T I N O. First name escapes me at  
9 the moment. Although we had him for a couple of  
10 years until he left the area unexpectedly.

11 Q. How many horses was Mr. Runco  
12 training?

13 A. He had one or two, depending on  
14 claims.

15 Q. Then in '06 or '07 you hired Mr., is  
16 it --

17 A. It's Cuttino, you pronounced it. I  
18 think that's the correct spelling.

19 Q. Hired him in '06 or '07.

20 A. Yeah.

21 Q. And had him until '08, '09?

22 A. Yeah, again roughly.

23 Q. How many horses did he train  
24 approximately?



Page 21

1 A. Over the period he probably had seven  
2 or eight.  
3 **Q. He ceased being the trainer because**  
4 **he left the area unexpectedly?**  
5 A. Right.  
6 **Q. Who was the next trainer?**  
7 A. Around this time we started -- no, we  
8 didn't start, we continued a breeding program in  
9 West Virginia and bought -- also, we bought two  
10 year olds in training from Randy Funkhouser. And  
11 we used his trainer, George Yetsook for probably  
12 18 months. This was taking us down to 2009,  
13 2010?  
14 **Q. Let me go back a minute.**  
15 **When Mr. Runco was your trainer, were**  
16 **the one to two horses that he was training**  
17 **stalled at Charles Town or off the property?**  
18 A. They were training out of stables at  
19 the track.  
20 I had one, I had horses on his farm,  
21 young ones, or maybe a young one.  
22 **Q. So the two that were racing were at**  
23 **the track and then there was a horse on the farm?**  
24 A. When I say two, I mean two at one

Page 23

1 and Yetsook.  
2 **Q. Over what?**  
3 A. Over the length of time that Yetsook  
4 was taking to get our young horses then prepared  
5 to race.  
6 **Q. Now, was there any overlap between**  
7 **any of these trainers?**  
8 A. Well -- yeah, we had a principal  
9 trainer who was with us all of this time in  
10 Laurel. His name was Dale Capuano. He was our  
11 trainer from the get go of all horses until we  
12 began moving them to Charles Town. Well,  
13 claiming from Charles Town.  
14 **Q. As between Mr. Runco, Mr. -- let me**  
15 **get this right, Cuttino and Mr. Yetsook, was**  
16 **there ever an overlap between those through?**  
17 A. No. The overlap was with Capuano all  
18 the time.  
19 **Q. After Mr. Yetsook, who did you hire**  
20 **to train horses at Charles Town?**  
21 A. After Yetsook we got Tina Mawing.  
22 **Q. How did you come to hire Ms. Mawing?**  
23 A. Reputation, actually.  
24 **Q. What about her reputation?**

Page 22

1 time. He probably had six or eight horses over  
2 the period. But they would come and go and  
3 change horses in the claiming business. We're  
4 still in the claiming business.  
5 **Q. I understand.**  
6 **Mr. Cuttino, the horses that he**  
7 **trained over time.**  
8 A. Yeah.  
9 **Q. Were they on the track or somewhere**  
10 **else?**  
11 A. They were on the track.  
12 **Q. Okay.**  
13 **How about the horses that Mr. Yetsook**  
14 **was training?**  
15 A. They were on the track -- some of  
16 them were on the track for a while. And then  
17 Randy Funkhouser moved them into private barns.  
18 And I don't remember what arrangement we came to  
19 at that point. There was some increase in cost,  
20 but I don't -- I don't remember the details. We  
21 weren't with him too long after that.  
22 **Q. Was it because the horses were moved**  
23 **off the track that you stopped using Mr. Yetsook?**  
24 A. No, it was a dispute with Funkhouser

Page 24

1 A. She had a good reputation for  
2 bringing along young horses.  
3 **Q. Generally on the track or was there**  
4 **somebody specifically that had told you about**  
5 **that?**  
6 A. It was -- yeah, it was track. I knew  
7 a lot of people around the track, trainers, and a  
8 lot of horsemen. And her name came up. And I  
9 went to visit with her and liked her attitude.  
10 And that -- it was my judgment call. And I put  
11 it to the owners of the day. And they generally  
12 agreed with what we were doing. And they agreed  
13 in this case to, for me to hire Tina Mawing.  
14 **Q. Do you recall a date when that,**  
15 **around a year when that happened?**  
16 A. I'm trying to -- it was after  
17 Cuttino, I've got all of this in written -- we've  
18 got five years of Hampshire records. But it  
19 would be around 2009. I think we had her  
20 for -- until the end the partnerships which was  
21 terminated in December 2010, the end  
22 of -- December 31st.  
23 **Q. How many owners did you have in the**  
24 **partnerships about the time you hired Ms. Mawing?**

Page 25

1 A. Probably 20.  
 2 **Q. I'm going to show you a document that**  
 3 **I hope will help you on the dates.**  
 4 A. Okay.  
 5 **Q. I'm showing you what's been marked**  
 6 **previously as Exhibit R-25 which I will represent**  
 7 **to you is a printout of Ms. Mawing's training**  
 8 **record.**  
 9 **It starts in the back, it's oldest to**  
 10 **newest, on January 1st, 2007 and goes through**  
 11 **February 27th of 2013.**  
 12 **I believe if you look in the 2008**  
 13 **period you may find some Hampshire Racing.**  
 14 A. What page is it?  
 15 **Q. Let me find one here. I'm going in**  
 16 **the wrong direction.**  
 17 A. We've got records of every race we  
 18 had, but I didn't bring it with me.  
 19 Here we are Page 4. Makinusfamous  
 20 was one. It's on Page 4.  
 21 **Q. I'm sorry, my mistake, I don't think**  
 22 **I see in Hampshire Racings in 2008, so I think**  
 23 **your recollection of 2009 is correct.**  
 24 A. Well, this is -- okay. Yeah, this

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1 weeks or -- I mean, weeks? Several weeks.  
 2 **Q. Okay.**  
 3 **When you hired Ms. Mawing, did she**  
 4 **have any stalls at the track?**  
 5 A. No. At least I don't think so. We  
 6 were told that we would be obliged to have them  
 7 kept off track. And I put the proposal to the  
 8 partners. And they kind of said, okay.  
 9 **Q. Did you have any reservations or**  
 10 **concerns about the fact that Miss Mawing was not**  
 11 **going to stall them at the track?**  
 12 A. I had reservations about the extra  
 13 charge that she would -- told us she would have  
 14 to make to cover the cost of the privately owned  
 15 stalls and the vaning of the horses to the  
 16 track, which was about, I guess, about three  
 17 miles, three or four times a week.  
 18 Those concerns I took to the partners  
 19 because they were financial and impacted them.  
 20 And recommended that we go ahead and try it.  
 21 I think I said there may be  
 22 advantages to having them off the track since  
 23 they, most of those that we knew were upcoming  
 24 were young horses.

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1 was in '10. This is 2010.  
 2 **Q. On Page 5 I see, six down from the**  
 3 **top, a July 2009.**  
 4 A. That's the same horse as on the  
 5 previous page, one of them anyway.  
 6 **Q. Yeah. What I'm trying to establish**  
 7 **is the first time Ms. Mawing raced a horse on**  
 8 **behalf of Hampshire Way. And it looks like that**  
 9 **might be it, July of 2009?**  
 10 A. How does this go?  
 11 **Q. It goes from oldest to newest.**  
 12 A. It's backwards.  
 13 **Q. Yeah, it's backwards.**  
 14 A. West Hampshire Way, that makes sense,  
 15 because that was a homebred, she was young. And  
 16 we were looking for a hands on trainer who  
 17 understood and frankly formed a relationship with  
 18 these young horses.  
 19 **Q. How --**  
 20 A. That would be about it.  
 21 **Q. How long before one of your, the**  
 22 **Hampshire horses, actually ran under Ms. Mawing,**  
 23 **did she have them in training?**  
 24 A. I haven't the foggiest idea. What

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1 **Q. What are some of those advantages?**  
 2 A. For the youngsters one of them would  
 3 be the relative quiet, away from the humdrum of  
 4 the track. We always recognize that if we moved  
 5 them anywhere else it would be at the track, so  
 6 this wasn't to be a -- we never really thought of  
 7 it to be a long-term thing.  
 8 **MR. HAMMER: I'm sorry, what**  
 9 **did you say?**  
 10 **THE WITNESS: Never thought**  
 11 **it was a forever thing.**  
 12 **BY MS. SCRIVANI:**  
 13 **Q. What was a forever thing?**  
 14 A. We didn't think of having horses  
 15 consistently in stalls away from the track  
 16 forever.  
 17 I think frankly we thought there  
 18 would be a move on her part back to the track. I  
 19 didn't know much then about the -- about why she  
 20 left. I don't even know now, I don't think,  
 21 firsthand, why she was, why she lost her stalls.  
 22 **Q. You never talked to her about that?**  
 23 A. Not really. It wasn't -- know her  
 24 that well. We didn't -- it didn't really matter



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1 to us at the moment.

2 **Q. Was Makin --**

3 A. Makinusfamous.

4 **Q. Makinusfamous and West Hampshire Way**  
5 **the only two horses that Ms. Mawing has trained**  
6 **for Hampshire?**

7 A. No. But I can't remember the others  
8 offhand without looking at the list here.

9 Makinusfamous was the claimer, West  
10 Hampshire Way was a, either a two or three year  
11 old homebred. It was these homebreds that we  
12 felt was an initial advantage to having them away  
13 for their first few months, at least.

14 **Q. Can you look at the list and see if**  
15 **you see any others?**

16 A. Yeah, I just saw some.

17 **Q. Those are the only two I'm seeing.**

18 A. Maybe. She had one later that  
19 we -- actually retired there, she was injured.  
20 That was neither one of those. I'm trying to  
21 think of the retiree.

22 To save a lot of time, you'll get  
23 the -- I'm having one of my senior moments. The  
24 horse we had with her was, we felt, one of our

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1 better horses. And toward the end of the  
2 partnerships in 2010 we were looking for a farm  
3 to take this horse for retraining into something  
4 else, dressage or even as a hunter. And we left  
5 her with Tina and Anthony. And I think they've  
6 used her since as a, as a jog, just a jogging  
7 horse who moved around wherever she is.

8 I can't remember the name of it. I  
9 can't find it here. I can't remember. I cannot  
10 remember the name of that horse.

11 **Q. Were there any others besides**  
12 **Makinusfamous -- I can't remember what I just**  
13 **looked at.**

14 A. West Hampshire Way.

15 **Q. West Hampshire Way and the horse who**  
16 **retired whose name you can't recall that Miss**  
17 **Mawing trained?**

18 A. No, I don't think so. Relatively  
19 speaking we weren't with her very long. As I  
20 said, it was towards the end of the partnership.  
21 The horse she kept could have been West Hampshire  
22 Way. It was a homebred. I didn't think so.

23 **Q. Now, you testified previously that**  
24 **the partnerships ended at the end of December**

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1 **2010. What was the purpose of ending the**  
2 **partnerships?**

3 A. The corporation ended in December  
4 31st, 2010. It was just a decision to close out  
5 the business. I was getting into my mid to upper  
6 70s. My wife who was the treasurer similarly was  
7 aging. And we decided in the ultimate to go out  
8 on the top with our 130th winner. And we did.

9 **Q. Who was that, the 130th winner?**

10 A. I don't know, I can't remember.

11 **Q. All right. If I look at Miss**  
12 **Mawing's chart there, if you turn to Page 3 of**  
13 **10.**

14 A. Uh-huh.

15 **Q. The last race I see for a Hampshire**  
16 **Racing Partnership horse is on May 30th, 2010,**  
17 **which is towards the end of the page,**  
18 **Makinusfamous.**

19 A. Yeah.

20 **Q. I don't see another Hampshire Race in**  
21 **2010, but if I'm mistaken, please let me know.**

22 A. Without my own records, I don't know.

23 **Q. Okay. Did you ever --**

24 A. Wait a minute, here is -- well,

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1 that's Makinusfamous. This goes the opposite  
2 way, doesn't it?

3 **Q. It goes the opposite way, right.**

4 A. Okay.

5 **Q. So the last race that Miss Mawing had**  
6 **in 2010 was on December 22nd, 2010, kind of in**  
7 **the middle of the page, with the horse that she**  
8 **owned. So that's where 2010 ends, do you see**  
9 **that? The dates are on this side.**

10 A. What are we looking for here?

11 **Q. Between May 30th, 2010 when**  
12 **Makinusfamous ran and the end of 2010 --**

13 A. Here, it ran twice.

14 **Q. do you see any Hampshire Racing**  
15 **racers?**

16 A. No. Let me just go through the  
17 horses. No.

18 **Q. No you don't see any?**

19 A. No.

20 **Q. Did you ever have any trainers at**  
21 **Charles Town after Miss Mawing?**

22 A. No.

23 **Q. Was the reason that Miss Mawing**  
24 **ceased being a trainer for Hampshire Racing**

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1 Partnerships was because the partnership ended?

2 A. Yes.

3 Q. Was the decision to cease using Miss  
4 Mawing as a trainer, did it ever have anything to  
5 do with whether or not she had stalls at the  
6 track?

7 A. No.

8 MS. SCRIVANI: I have  
9 nothing further, thank you.

10 \* \* \*

11 EXAMINATION

12 BY MR. HAMMER:

13 Q. Mr. Barr, I want to kind of go back  
14 in time a little bit. Just a little bit more  
15 background information from you.

16 You're retired from the federal government?

17 A. Yes.

18 Q. What agency were you employed by?

19 A. The last agency was Commerce, I was  
20 Justice, and Labor, and then the US Senate before  
21 that.

22 Q. How many years did you serve with the  
23 US Government?

24 A. 25.

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1 Yetsook's association with Randy Funkhouser who  
2 was, I think, possibly then was head of the  
3 Horseman's Association. But I can't really be  
4 any more specific.

5 However, during this period track  
6 management, because of my complaint on the  
7 conditions of the track and the fact that I had  
8 my first, experienced my first breakdown there  
9 and then a second one a couple of months later,  
10 that resulted in the racing secretary, on the  
11 instructions of I don't know who, declined to  
12 take my entries.

13 Q. Do you recall the name of the racing  
14 secretary?

15 A. I would if you -- somebody reminded  
16 me. I don't -- Randy somebody.

17 Q. Randy Wehrman?

18 A. That's right.

19 Q. Okay.

20 A. I didn't get any explanations from  
21 Randy except that he had been told not to accept  
22 my -- my entries.

23 \* \* \*

24 (Brief break)

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1 Q. 25 years.

2 You're currently how old?

3 A. 80.

4 Q. 80.

5 I want to talk a little bit about

6 conversations that you had with management  
7 regarding your selection of trainers.

8 Do you recall ever having a  
9 discussion with anyone from the Charles Town

10 Races management about who you were to select as  
11 a trainer?

12 A. Yes.

13 Q. What do you recall?

14 A. I had a disagreement with management  
15 over a letter I had written to the head of PNGI  
16 about safety, concerning safety, or unsafe  
17 conditions of the track. I'm trying to remember  
18 when that was, probably around 2006. Anyway,  
19 it's in the chapter of the book I wrote about my  
20 experiences in horse racing.

21 It was a -- there was a conversation  
22 about my association with Yetsook, George  
23 Yetsook, the trainer. That's -- I'm trying to  
24 remember now. That had something to do with

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1 \* \* \*

2 THE WITNESS: Oh, Yetsook was  
3 under some sort of court order, is my  
4 recollection. And he kept horses for me under  
5 the protection of that order and was able to  
6 race, legally race them. I guess you would call  
7 it hiding behind George Yetsook at the time,  
8 since I -- and I accepted that because, you know,  
9 you can't do much with the partnership if you  
10 can't race the horses.

11 My alternative was to send them all  
12 back to Capuano and Laurel. But when we found  
13 that we -- at least when Yetsook and his boss,  
14 Randy Funkhouser, I think they had to go to court  
15 for this, or something happened. And anyway, I  
16 was allowed to race a couple of horses, I had  
17 gone with Yetsook at the time.

18 And he kind of got me over the hill  
19 until we could get this ban lifted, which  
20 I -- which they ultimately did lift for me, about  
21 10, 15 days later.

22 BY MR. HAMMER:

23 Q. Did management express any concern to  
24 you about your selection of Yetsook as someone



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1 through whom you could race your horses?  
 2 A. Yeah. I think the vice president for  
 3 racing at that time suggested that he wasn't the  
 4 best choice for me.  
 5 Q. Do you remember the vice president's  
 6 name?  
 7 A. Again, I would if you...  
 8 Q. Dickie Moore?  
 9 A. No, no, his --  
 10 Q. Al Britton?  
 11 A. No, his forerunner.  
 12 Q. John Finamore?  
 13 A. Yes. And John and I had several  
 14 talks. And ultimately I think we had a meeting  
 15 of the minds and came to an understanding that I  
 16 wasn't deliberately trouble making, but I  
 17 think -- in fact, I know his problem was, and  
 18 Dickie Moore's problem was that I had written a  
 19 letter straight up to the president in  
 20 Harrisonburg instead of going through channels.  
 21 Q. So I'm not sure why is it that they  
 22 refused to accept your entries.  
 23 A. I don't know except secondhand. We  
 24 discovered at one point that they -- an entry was

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1 You can answer.  
 2 BY MR. HAMMER:  
 3 Q. You can go ahead and answer.  
 4 A. I don't recall.  
 5 Q. Okay.  
 6 As accurately as you can recall, can  
 7 you tell us what Mr. Finamore's comment was to  
 8 you?  
 9 A. Yes, it was something to do with  
 10 making a poor choice of trainer. And I -- I made  
 11 an assumption from that.  
 12 Q. Did he explain to you why he thought  
 13 Mr. Yetsook was a poor choice?  
 14 A. No. He left me to make my own  
 15 assumption, which I did.  
 16 Q. In the context of the conversation,  
 17 what did you take his statement to mean?  
 18 A. I took it to mean that, that  
 19 management and Funkhouser were butting heads, not  
 20 only as -- well, were butting heads. I think  
 21 that was well, well known around the track. I  
 22 certainly knew, because I was dealing with  
 23 Funkhouser in the purchase of horses, but... And  
 24 there were conversations. But it's -- it's kind

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1 turned down at the racing secretary's office. I  
 2 tried to find out but...  
 3 Q. Did Mr. Wehrman tell you why he had  
 4 been told not to accept your entries?  
 5 A. No.  
 6 Q. How long a time was it that your  
 7 organization could not race in Charles Town?  
 8 A. It was probably a matter of -- well,  
 9 the contretemps was extended over a period of  
 10 about a month. And there were meetings between  
 11 me and Dickie Moore, and Finamore on two or three  
 12 different occasions. But meanwhile, I assumed  
 13 they knew that we found a way to at least race  
 14 the horses a couple of times while all of this  
 15 was going on under whatever court order that  
 16 Yetsook and -- and his --  
 17 Q. Funkhouser?  
 18 A. Yeah. Funkhouser had accomplished.  
 19 Q. Was it after you informed track  
 20 management that you were racing your horses  
 21 through Yetsook that Mr. Finamore made a comment  
 22 to you about being more careful about who you  
 23 chose to train your horses?  
 24 MS. SCRIVANI: Objection.

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1 of hearsay.  
 2 Q. Did you make any changes in  
 3 management direction of Hampshire Racing as a  
 4 result of your conversation with Finamore?  
 5 A. No. We were able to continue for the  
 6 time of the fire that I ignited by writing the  
 7 letter and the settlement of that which was  
 8 ultimately on good terms. And to the extent that  
 9 Dickie Moore bought my wife and I dinner in the  
 10 clubhouse after my final conversation with John  
 11 Finamore who said he would make sure everything  
 12 was taken care of.  
 13 Q. With regard to your specific safety  
 14 concerns about the track at Charles Town, what  
 15 were they?  
 16 A. They were concerns during the,  
 17 particularly during the times of wet tracks,  
 18 sloppy tracks, over the footing of the horses.  
 19 There was a period then that my recollection was  
 20 more than ten horses had gone down in a 48, 72  
 21 hour period. And that came after my personal  
 22 accident when I lost a horse in May, this would  
 23 be closer to the end of the year. And  
 24 that -- then I lost, the only horse I ever owned,

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1 I lost also toward the end of that year. She  
2 broke down in the backside.

3 Generally, I felt that a bad job had  
4 been done on the -- when they rebuilt and  
5 resurfaced the track.

6 I think there was a time when I had  
7 offered or was involved in getting the track  
8 superintendent from Laurel to come and see if he  
9 couldn't help. I'm not sure whether I mentioned  
10 that to Finamore, I could have. I know that it  
11 was talked about.

12 Ultimately I think the track decided,  
13 there was some negotiation with the  
14 superintendent at Laurel that I was aware of.  
15 But it came to nothing.

16 **Q. Just out of my only personal  
17 curiosity, what is the title of your book?**

18 A. It's 1,000 to 1. And it had a  
19 subtitle. How to race horses on a shoestring, I  
20 think, and win. And it's published by  
21 AuthorHouse. I was going to bring the book with  
22 me, but I only have one copy left.

23 **Q. Who is the publisher? I'm sorry.**

24 A. AuthorHouse.

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1 in the book.

2 **Q. Well, I want to test your memory on  
3 that just a little bit, because you did then make  
4 reference that you had two horses in the year,  
5 you said in that year. Was that the year that  
6 you wrote that letter that you had two horses  
7 break down?**

8 A. I wrote after -- probably.

9 **Q. Can you recall if it was May of 2006  
10 and then the end of 2006 when you had those break  
11 downs?**

12 A. May, I'm pretty sure, was when the  
13 one broke down. And it would have been October,  
14 November, I think, when I lost my own, that was  
15 my own horse.

16 **Q. Was that in 2006 to the best of your  
17 recollection?**

18 A. Yeah.

19 **Q. Okay.**

20 Sir, the reason I'm asking this is  
21 because Mr. Wehrman was not employed by Charles  
22 Town in 2006. He did not come to Charles Town  
23 until after 2008.

24 A. Well, then it was a different race.

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1 **Q. Is it still in print?**

2 A. It is still in print and I still get  
3 royalties. And I'm going to update it one of  
4 these day. It was up to the 15th year of the  
5 partnerships.

6 And there is a chapter that has, did  
7 describe some of what we've just been discussing,  
8 perhaps more accurately, or succinctly.

9 MR. HAMMER: Thank you,  
10 that's all the questions I have for you.

11 MS. SCRIVANI: I do have a  
12 little follow up, I'm sorry.

13 THE WITNESS: That's okay.

14 \* \* \*

# EXAMINATION

16 BY MS. SCRIVANI:

17 **Q. Sir, talking about your concerns  
18 about the conditions of the track in a letter you  
19 said you wrote up to Penn National in  
20 Pennsylvania, was that letter addressed to Peter  
21 Carlino?**

22 A. Yes.

23 **Q. You said that that was in 2006?**

24 A. To the best of my recollection. It's

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1 Did I say -- I said Randy, didn't I?

2 **Q. Yes.**

3 A. Is his last name Wehrman?

4 **Q. Wehrman.**

5 MR. HAMMER: You did. But he  
6 had two employments at Charles Town.

7 BY MS. SCRIVANI:

8 **Q. His last one ended in 1999 and then  
9 he did not come back to Charles Town until the  
10 spring of 2008.**

11 A. The -- I wasn't sure on that name in  
12 the first place. I know there was a secretary  
13 named Randy. If the dates don't jibe, it  
14 wasn't -- because Wehrman doesn't ring a bell.  
15 But anyway, the fact of the matter was, I was  
16 instructed by the racing secretary's office that  
17 they were not allowed to take Hampshire Racing  
18 Partnership entries for a short period of time,  
19 whenever that was. And if it wasn't Randy  
20 Wehrman, whoever the racing secretary was of the  
21 day would be it.

22 **Q. Was there ever any overlap in  
23 training time between Mr. Yetsook and Ms. Mawing?**

24 A. No.



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1 Q. So when Mr. Finamore made a comment  
2 about your choice in trainers, did you ever  
3 understand him to be speaking about Miss Mawing?

4 A. No, it was to do with Yetsook.

5 MS. SCRIVANI: I have  
6 nothing further, thank you.

7 MR. HAMMER: One last  
8 question.

9 \* \* \*

10 EXAMINATION

11 BY MR. HAMMER:

12 Q. Does the name Doug Lamp ring a bell  
13 to you?

14 A. It does, but that wasn't it.

15 Q. That wasn't the person?

16 A. No.

17 MR. HAMMER: That's all the  
18 questions I have.

19 You have the right to read and sign  
20 your deposition transcript, you can correct or  
21 make any changes to the transcript you need to  
22 make. You can choose to exercise that right or  
23 you can choose to waive that right. The choice  
24 is entirely yours. You need to let the court

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1 reporter know what you want to do.

2 THE WITNESS: Yeah. I'd like  
3 to see it.

4 You want corrections noted in pencil?

5 MR. HAMMER: You will get an  
6 errata sheet. It has a line number and what your  
7 correction is.

8 THE WITNESS: That doesn't  
9 stop me from going back and refreshing my memory  
10 from the big box of five years of, the last five  
11 years of Hampshire and my book of recorded races,  
12 600 and something races. So you'll understand  
13 that these things get kind of jumbled.

14 MS. SCRIVANI: I understand  
15 that. And it's entirely up to you if you do  
16 that. I will --

17 THE WITNESS: It would  
18 probably be helpful to you, I think.

19 MS. SCRIVANI: -- give you  
20 a heads up that, you know, when we get an errata  
21 sheet back, if it has changes to your testimony,  
22 we will likely call you back to talk about them.

23 THE WITNESS: Okay.

24 \* \* \*

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1 (Whereupon, this deposition  
2 was concluded at 12:04 p.m.)

3 \* \* \*

4 (Whereupon, signature was not  
5 waived by the witness.)

6 \* \* \*

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1 THE STATE OF :  
2 WEST VIRGINIA :  
3 : SS: CERTIFICATE  
4 COUNTY OF OHIO :

5 I, TAMELA G. SHEELER, Registered  
6 Professional Reporter, do hereby certify that the  
7 testimony given by the within-named witness,  
8 MALCOLM G. BARR, was by me reduced to stenotype  
9 in the presence of the witness; afterwards  
10 reduced to Computer Aided Transcription under my  
11 direction and control; and that the foregoing is  
12 a true and correct transcription of the testimony  
13 given by said witness.

14 I do further certify that this testimony was  
15 taken at the time and place in the foregoing  
16 caption specified, and was completed without  
17 adjournment.

18 I do further certify that I am not a  
19 relative, counsel or attorney of either party, or  
20 otherwise interested in the event of this action.

21 IN WITNESS THEREOF, I have hereunto set my  
22 hand in Wheeling, West Virginia, on the 22nd day  
23 of March, 2013.

24 TAMELA G. SHEELER  
Registered Professional Reporter

Page 49

1 THE STATE OF :  
2 WEST VIRGINIA :  
3 : SS: C E R T I F I C A T E  
4 COUNTY OF OHIO :  
5

6 I, TAMELA G. SHEELER, Notary Public  
7 within and for the State of West Virginia, duly  
8 commissioned and qualified, do hereby certify  
9 that the within-named witness MALCOLM G. BARR,  
10 was by me duly sworn to testify to the truth, the  
11 whole truth and nothing but the truth in the  
12 cause aforesaid.  
13

14 I do further certify that I am not a  
15 relative, counsel or attorney of either party, or  
16 otherwise interested in the event of this action.  
17

18 IN WITNESS THEREOF, I have hereunto set  
19 my hand and affixed my seal of office at  
20 Wheeling, West Virginia, on the 22nd day of  
21 March, 2013.  
22

23 TAMELA G. SHEELER, Notary  
24 Public within and for the State  
of West Virginia

My Commission expires:  
November 4, 2021



**Subject:** FW: Mawing v. PNGI // AAA No: 55-196-Y-00015-12  
**From:** Pennington, Nicholas (NHP@stevenslee.com)  
**To:** SASC@stevenslee.com;  
**Cc:** staceyscrivani@yahoo.com;  
**Date:** Tuesday, June 11, 2013 4:35 PM

**From:** David Hammer [mailto:DHammer@hfslawyers.com]  
**Sent:** Monday, April 29, 2013 1:17 PM  
**To:** Scrivani, Stacey A.; hwad50@aol.com  
**Cc:** Wolfson, Joseph; Pennington, Nicholas; Christina Bernhard; Hwad50  
**Subject:** RE: Mawing v. PNGI // AAA No: 55-196-Y-00015-12

Stacey,

Client and her husband spent the weekend going through old files, storage, and whatever else they could search looking for invoices. They have all of the 2012 and 2013 invoices and a few strays from years earlier. Once an invoice was paid and the payment matched the invoice they did not routinely save invoices.

I have also queried Ms. Mawing regarding the computer used to generate the older invoices. They do not have the computer and Ms. Mawing believes they have been through at least several computers over the years. They also do not have any back-ups of the old computer systems.

I understand that the invoices will be delivered to me tomorrow. We will pdf them and depending on the time of day, either email them to you tomorrow or Wednesday morning.

With regard to resuming Randy Werhman's deposition I am awaiting dates from you. I don't think the deposition will take very long and I anticipate doing it by telephone. Please provide me with several alternate dates when you are available.



Thank you,

David Hammer

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**From:** Scrivani, Stacey A. [<mailto:SASC@stevenslee.com>]  
**Sent:** Monday, April 29, 2013 8:36 AM  
**To:** David Hammer; [hwad50@aol.com](mailto:hwad50@aol.com)  
**Cc:** Wolfson, Joseph; Pennington, Nicholas  
**Subject:** RE: Mawing v. PNGI // AAA No: 55-196-Y-00015-12

David,

I'm following up on the below. If you are not able to give me a date by which these will be produced this week, we will have no choice but to go back to the panel to compel a production deadline.

Stacey

**Stacey A. Scrivani | Stevens & Lee, P.C.**  
111 North Sixth Street | P.O. Box 679 | Reading, PA 19603  
Phone: (610) 478-2086 | Internal: ext 655 | Fax: (610) 988-0812 | E-mail: [sasc@stevenslee.com](mailto:sasc@stevenslee.com)

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**From:** David Hammer [<mailto:DHammer@hfslawyers.com>]  
**Sent:** Wednesday, April 24, 2013 10:39 AM  
**To:** Scrivani, Stacey A.; [hwad50@aol.com](mailto:hwad50@aol.com)  
**Cc:** Wolfson, Joseph; Pennington, Nicholas  
**Subject:** RE: Mawing v. PNGI // AAA No: 55-196-Y-00015-12

Not yet as she's assessing what will have to be searched.

David Hammer